the franchise basis if I can run it just as well by buying from Hear Cross and buying from Buster Brown and buying from Freeman? You are asking me a thing that I just changed from, and I changed because—The record will tell you why. You asked me why I changed. Because I can have more advantage of the fieldman working with me. I can control my inventory better. I can have this monthly report that I can sit down and study at the end of the month. It just all comes to me as proof of the operation at Mount Vernon since 1952 as the easiest operation.

Q. Is it your understanding, then, in order to have the Brown serviceman, that you would take on the Brown line?

A. No. But I am sure that I can get more advantage of the Brown man if I would concentrate. It was not my idea to drop Red Cross shoes.

The witness carried the Leverenz line in the Olney store, about 3 years ago. He made one buy of about 5 styles and one buy of about 15 to 16 pairs of a stock. That was before he became a Brown franchise store there.

The witness has no competition that he knows of in Brown lines in Mount Vernon. As to the other stores, there might be a few Risque shoes in the Brownie Shoe Store. It is a line of Brown Shoe Company, but he does not carry them.

[fol. 321] Redirect examination.

This Godman shoe, compared to Life Stride, might have a little longer line of shoes, a wider variety of shoes, from a style standpoint. Constructionwise there is not much difference. The longer line would be on the conservative order. They have more patterns than Life Strides of a conservative order. Life Stride is more a fashion type.

When the witness went to the franchise program in Olney, he was not asked to drop any particular line. But for these years they have had two very profitable lines of shoes in Mount Vernon, Roblee and Naturalizer. Each time that the witness would buy from the salesman, he would like to sell them to the witness in Olney. The witness

was not asked to drop any line of shoes at any particular time. The purchase of Roblee or Naturalizer was not a requirement in order to go on the franchise program.

The Clinic shoe is a professional women's shoe, to go with a white uniform, white collar. They are all white. He stocks 7 styles of Clinic shoes in Olney. He does not stock any of the Naturalizer's professional women's white shoes in Olney. That being the case, Clinic does not conflict with Naturalizer as far as his stocking of those shoes because he doesn't buy any Naturalizer white shoes. He is concentrating on the best line of white-duty shoes, as Clinics are known in the country.

[fol. 322] The Hush Puppy has a particular suede-type leather finish on the outside of the shoe. Pedwin has some styles that have a similarity to that in a brushed-leather type. He does not carry the brushed leather in the Pedwin while you are carrying the brushed leather in Hush Puppy. So he does not duplicate in that area. He buys brushedleathers only from Hush Puppy and does not look at them from Pedwin. So there is no conflict.

Hearing Examiner Creel: You said you were not required to take on additional lines when you became a franchise-plan account in Olney.

The Witness: I was never asked to take them on.

Hearing Examiner Creel: What did you understand you had to do to become a franchise-plan account at that place?

The Witness: I understood from the past experience that if a franchise was going to help me any it would help me more if I had those two lines of shoes-Roblee and Naturalizer.

Hearing Examiner Creel: What I am trying to get at is this: If you didn't understand that you had to do anything to become a franchise-plan account, why didn't you become one long before and get the benefits?

The Witness: I knew that wouldn't work out much better. I could have more advantage with the fieldman if I took on those two lines of shoes. I also know that in a store of mine that I can't buy two conflicting lines of shoes like Red Cross and Naturalizer and Freeman and Roblee. I just knew that I could do better if I went on their lines of shoes and could work with the fieldman, and I wasn't ready to try to work in both of them. From 1952 to 1960, when we operated in Mount Vernon, I was convinced that I was ready to go on the franchise basis.

Hearing Examiner Creel: And take on the lines whether

you were required to or not?

The Witness: Yes, sir. I was going to take them on in time at least.

[fol. 323] WILLIAM B. HOWARD, called as a witness for the Respondent, testified as follows:

Direct examination.

The witness resides at Hillsboro, Illinois. He has a shoe store there named Howard's, of which he is the proprietor. He has had that shoe store since March 14, 1960. It is on the Brown franchise program and went on March 14, 1960. He opened under the plan. This is the witness' first experience in the shoe business as an owner. He has been in the shoe business before, working for other stores.

The witness went on the franchise program because he had been out of the shoe business 10½ or 11 years, and he knew this is a very fast changing business. So he felt that he needed the guidance, going back in and starting out. The particular feature of the guidance which was important to him was their bookkeeping system. It's a unit-control system, under which you have a daily picture of every category of shoes that you carry in the store. You have the profit picture at the end of the month. It's just a much easier way for an independent merchant to operate and really know where he is going at all times.

Hillsboro proper is a community of 4,276. The witness considers that his store caters to a much larger area than the residents of Hillsboro. He said we reach down into small communities approximately 20 to 30 miles away. They don't draw too well west because Litchfield is 10 miles west and it's a bigger town. They are direct com-

petition with Hillsboro merchants.

In Hillsboro the witness is Chairman of the Retail Merchants' Association, resident of the Chamber of Commerce, and he is a Director of the Seven Cities Industrial Council. There are 10 other shoe outlets or shoe stores in Hillsboro that sell shoes. The witness is the only family shoe store. Directly across the street is a department store, but they do carry men's, women's, children's footwear complete. In the department store they really have

a family operation.

[fol. 324] In his store the witness carries Air Step, Life Stride, Smartaire, Robinettes, and Buskins, Roblee and Pedwin in the men's; a service shoe from Portage which is Weyenberg. He also carries a line of work shoes. He has Robin Hood's, a few Buster Browns, Godman's and Natural Bridge lines of arch shoes, Daniel Green house slippers, Nite Life house slippers and B. F. Goodrich in canvas and rubber footwear. He did have Williams, but took them out this season because the shoes didn't fit, and because he had the line for 13 years, and the salesman went across the street and established an account with the same shoe 70 feet from his front door. The witness will not buy the same line in a town of that size.

Natural Bridge would, to a certain extent, conflict with Air Step. They fall in the same price range. There is a difference as to style or pattern. They are two different manufacturers. The Air Step has the arch shoe but the Natural Bridge has a much broader line of arch shoes. He does not carry the Air Step arch shoe, but does carry the Natural Bridge arch shoe. Air Step and Natural Bridge do not conflict the way he is carrying them.

Godman's are a cheaper line of arch type shoe. They would be in the same type of shoe as Natural Bridge, in a different price range though. They would fall more in the price range of the Life Stride line. Godman's shoes that he has are conservative pumps and ties (oxfords). Life Stride is a higher style line. The particular type of shoe that he carries in Godman is an older woman's shoe.

The witness does not carry any Leverenz shoes. The Leverenz salesman does not come to see him. He is not familiar with any shoes made by Huth-James. He has never seen the Huth-James salesman. In regard to the

Deb Shoe Company, a salesman of that company has never called on him. He thinks the Freeman salesman he has called on him. He did not buy any Freeman shoes from him. He didn't feel that he had any need for it.

As to a professional woman's type of shoe, nurse type, the witness has Air Step. He has attempted to purchase [fol. 325] Juvenile but they turned him down. He doesn't remember the entire part of the letter but it was to the effect that they weren't interested in opening an account in Hillsboro at the time. They did not have one there and there still isn't one.

At this time Respondent's Exhibit 1 was marked for identification and shown to the witness. The witness identified it as a communication he received from the Juvenile shoe corporation in regard to the subject matter he has just testified to. It is a copy of the original letter that the winess received from them.

Respondent's Exhibit 1 was received in evidence over objection on the grounds of lack of relevancy.

The witness has heard nothing from Juvenile Shoe Company since this letter. He has had no further communication from them. He has not communicated with them since that time. He needed a line of shoes and so he bought one.

The witness carries a particular line or brand of shoes because it has sales appeal and public acceptance and makes money. If the shoes sell and you get repeat business, that is what they have to depend on in a small community. They have got to have the right merchandise, and if a line does that for them that's what they want. He thinks that is the determinative factor. He makes his own decisions as to the choice of lines and styles that he buys. As to whether he carries any overlap of one line to another in brands or styles, the witness said, well, price probably, but he doesn't feel that they are conflicting in types of shoes, in their categories.

The witness was asked to explain what other criteria or what other factors are involved in this question of whether a line conflicts with another line. He said you could have two lines of shoes that sold for the same price, but they would appeal to a different man or woman. You can't class a mamma-type shoe, an older woman's shoe, into the high type picture even though they might retail at the same price. In his store Godman and Natural Bridge would be classified mamma-type shoes. Air Step is [fol. 326] a pretty broad line. A high percentage of the witness' shoes appeal more to the middle-age woman. He doesn't use the Air Step line to appeal to the teenage or young professional woman wanting a high style. The lines he carries for that area are Life Stride or Smartaire. When he is carrying a line he caters to what he hopes will be a particular group of customers.

In all lines they will stock certain patterns in depth. You can't stock every number, the fringe merchandise, real high style stuff that perhaps they get little opportunity to sell. You are not going to put that in, in the depth that you would of a shoe that appeals to the woman for every day. In other words, the shoe that they have the most calls for, they stock those in depth. The one that isn't what you call "fashion business".

"Stocking in depth", means running your sizes from 4 to 10AAA. He usually runs his AAA, AA, B and C widths. In style shoes he wouldn't carry but AA and B's and then maybe in one or two numbers add the triple. These are two instances, one of stocking in depth, and the other, of not stocking in depth. The purpose of stocking in depth is that you can fit more customers. The ones he stocks in depth are the shoes that the fashions don't change as fast. You can't buy a real high style shoe and put it in from 4's to 10's in all widths-you have got about a 5 month selling season—and except to get rid of all of them and not take a bunch of markdowns. If you carried everything in depth you would have an outrageous inventory and it wouldn't give you any turnover whatsoever. Your mark downs would eat you up. The type of turnover that he tries to achieve is a 2 to 21/4 times turnover. That means turning his stock over 2 and 1/4 times a year. They are not achieving that average in all departments. But in their overall picture he thinks they are accomplishing that. That is achieved by controlling your inventory. They have to watch what sizes are selling. You can't buy everything in depth. They double up on the heart sizes that they know are pretty certain will sell. They are not going to get that turnover on fours or size 10's. The turn you would get would be on 7, 7½ or 8, speaking of women's shoes.

[fol. 327] As to whether carrying one line with no overlaps on another line, helps in the inventory problem, the witness said, it is much easier to control if you use just one line. If you were trying to merchandise one price range in the same classification of shoes, same styles, you would be running yourself silly trying to deal with 3 or 4 companies. On an operation of his size especially, he could only handle one company.

As to the meaning of the term "line concentration", the witness spoke of Air Step, for instance, where they cover a range of heel heights, colors and styles and patterns. You can do a better job buying that line, or whatever line it might be, if you have got the entire picture in front of you at one time, because they just don't make one shoe or heel height. They have got a large selection. And you would get all confused trying to remember 6 or 8 weeks later when another salesman came in with another line, what type of shoe you had bought. In the categories and types of shoes, the wtiness sticks with one line and concentrates on the line. He thinks it does a better job. This concentrating on one line very definitely helps them control their inventory.

The witness mentioned that they carried B. F. Goodrich rubber footwear. This is because it was established in the store when he purchased the store. It has a good reputation. There is not a better line, so he just continued with the line.

As a part of the franchise program he subscribes to the group fire insurance that is provided under the program. As to the reason, they think it's a savings with the method that they have of handling that, at the end of each month you have a perpetual inventory figure. In case you would have a fire loss you just couldn't be very far off on it. And it still is cheaper for the simple fact that it is actually insured for the amount of that month because you peak your inventory. You might have \$20,000 at one time of

the season, a \$20,000 inventory, whereas at your low ebb, closing out, you might be down \$10,000. So if you were going to cover with an individual insurance concern you would have to cover for \$20,000 to take care of the peak [fol. 328] periods, whereas this is flexible. That is tied in with his record keeping.

He does not take the window trim service that is provided on the franchise program. He has not used the architectural service. The witness was financed in the acquisition of this store by Brown. He utilizes the services of the fieldmen on the Brown franchise program. He finds those services of value. The witness said, he will sit down with you and especially about the first six months-I never had much bookkeeping experience, and he worked very closely with me on these monthly profit and loss statements which I found rather complicated and he was there to help me at the end of every month to close out and then he works with you, analyzing turnover and what departments you have got ot watch a little closer, do a little more promoting on, build up. In other words, he gives the witness some counsel in regard to his merchandising.

The witness is under no restriction or limitation whatsoever in regard to whether he continues on the program. He could leave the program any time.

Q. Do you continue on the program because of the benefits or is it because of the shoes that you use?

Mr. Rogal: I object to that question, Your Honor. It is highly leading.

Hearing Examiner Creel: Yes, it is. Of course, if he would ask him now he would have those things in mind. I will sustain it. You can rephrase it.

By Mr. Burke:

Q. Looking on the franchise program solely because of the benefits that are offered by the various matters that you—

Mr. Rogal: I am sorry to be interrupting you, but the question seems to be the same.

Hearing Examiner Creel: Well, it seems to me it is perfectly obvious it is not for that sole reason. He wouldn't

buy the shoes if he couldn't sell them.

[fol. 329] Mr. Burke: I appreciate that, and if counsel for the Government would so stipulate I think it would move along, because I think that there has been an implication and the nature of the complaint is directed to the fact that for some reason these people are on this program and they buy Brown shoes because of these benefits. And it is obvious and it is so elementary that a businessman is in the business of selling shoes, and the only reason he uses a certain type of brand of shoes is because they have customer acceptance and he can profitably do business.

Hearing Examiner Creel: Of course, other brands have

customer acceptance, too.

Mr. Burke: That's right.

Hearing Examiner Creel: But a particular thing might cause a retailer to take on one line rather than another, but in both cases he would expect to resell the product or he wouldn't buy it.

Mr. Burke: That's right.

Hearing Examiner Creel: And it seems to me it is so obvious it doesn't require any testimony on the subject.

The lines of shoes that the witness is carrying in his store are the result of his own personal choice. If a shee is not performing he would discontinue it and sell it and get rid of it real fast. He would do that in regard to any shoe that he carries regardless of brand or who it belonged to. It certainly doesn't make any money setting on the shelf. He is going to do it to the Godman line as soon as he gets back. He sold 24 pairs; since March 14, 1960. It's not profitable to carry those when you are carrying better than 220 pairs of their shoes. His decision is they are going out. His store doesn't have that class of trade. They get their business on Natural Bridge which is a higher price line. It is too cheap a shoe for them. If the line is not right they don't continue it.

The witness doesn't have a written contract arrangement with Brown. He has a note in connection with the [fol. 330] loan, but that's all. The note is payable over a

term. He has a monthly payment schedule over the loan period.

Cross-examination.

The following brands of shoes were carried by the former owner when the witness bought the store: Air Step, Life Stride, Natural Bridge and Godman's, ladies' shoes, and Perkies by Grinnell. He has Perkies in there at the present time. The former owner had Crosby Square, Roblee, a scattering of Curtis men's shoes and Pedwins. And in the children's, Buster Brown and Robin Hood. He had some Red Wing in men's work shoes. And Portage, which is Weyenberg, which the witness continued with. It was not a Brown franchise store before the witness bought it.

[fol. 331] The witness did not discontinue the Red Wing work shoe. The line had been taken out by the previous

owner.

The store was substantially a Brown store in lines at the time the witness took it over. He didn't continue to carry the Portage work and service shoe. He put it out on sale when they cleared the store. They sold it down to the shelf, and he cleared out the stock the best he could. He didn't put in a line of work shoes for 3 months, looking for something he thought would be a better line. But he found out that there was none, so he went back and bought from them. He decided to drop them and then reconsidered it. There is something in the Brown line that compares with the Portage work and service shoe. As to whether Brown can fill his needs in that respect, he said, Brown on their work shoes, doesn't have as broad a line. He doesn't know how many numbers they have. He doesn't really know what the Brown line consists of.

The witness is going to drop the Godman shoe and expand the Natural Bridge line. Within a few months that will be the only line that he has that conflicts with a Brown line. Buskin is a line of growing girl's flats and sports. They could fit in with the Rebinette line to a certain extent. The prices overlap there. Robinette doesn't go as low in price as they do, but Buskin will come up

into the Robinette range. He feels it is necessary to carry Buskin's and Robinettes because of the price structure. He is not buying the higher priced Buskin line. He is buying the lower price to come up and meet with Robinette and carry on.

Air Step has similar numbers in price and style to the Natural Bridge arch. There are about the same price range. He carries Natural Bridge rather than carrying the full Air Step line, because what he carries in Natural Bridge is the older ladies' staple type shoe, pump and oxford style. They have a broader line than Air Step in that particular type of shoe. In the little higher style shoe Air Step has got them beat in sales appeal and quality and price. The price structure is the same, but for the dollar value received it's a far better line. Another [fol. 332] reason he would prefer getting Air Step's where he can is that they are this close to St. Louis, while Natural Bridge is at Lynchburg, Virginia. Shipping costs are a terrific factor in a small business today. The witness pays the delivery cost himself. He thinks Air Step is better quality, has better fitting qualities. With the dollar value received for their customer, whom they are interested in because they have to have return business, he thinks the Air Step gives them the most for their dollar, as opposed to the Natural Bridge. But the Natural Bridge in the area that he buys is broader, and he would say that their quality is comparable, every bit as good as Air Step, in that area of the line. The witness means by styles, not considering colors. Natural Bridge is a broader line in that arch support field. Some of his Air Steps are shipped from St. Louis. In their area, too, he thinks they have a certain amount of sales appeal to the public because there are an awful lot of people in the area who make their living off the Brown Shoe Company. They have that plant at Litchfield.

The witness first started looking into the store he bought, 8 years ago. He gave it a good deal of thought. He couldn't buy it right as long as the owner was living. When he passed away in December the witness bought it in March from the estate.

He first heard of the Brown franchise program 8 or 10

years ago. He had never had any personal contact with it, working in a Brown franchise store. He just knew that there were Brown franchise stores. He contacted Brown approximately 8 years ago with respect to this store becoming a Brown franchise store. At that time the store was for sale, the owner was failing. He wrote Brown and told them that he was interested in buying it and that he wanted to talk to them, and he was down there on one occasion and talked to someone. But he could never get the owner to any where near a reasonable figure so he just dropped the matter. In fact, the owner sold it once, and then rebought it.

At the time he contacted Brown, about the only thing he did was request information about the franchise plan. what they had to offer, just more or less to familiarize himself with at at that time. There was no discussion [fol. 333] of borrowing money from Brown at that time. That first came up the latter part of 1959. The estate was constantly coming down on the figure and they started getting closer together. Then he came to St. Louis and talked to Brown about some financial assistance. At that time he talked to Tom Curtis of the franchise division. He mentioned the fact that he was going to have to have some financial assistance but never went into detail on the thing. Curtis just told the witness that he would have to get closer to final arrangements, whether he could buy it or not before they could go any further with the thing. The store was being operated all this time.

When the estate accepted his offer, the witness called Mr. Pinnick, the Brown fieldman. He did not have assurance from Mr. Pinnick that he would be able to get money from Brown at that time. That's why he had to get a figure to go to Brown with. He couldn't just go to them and say he didn't know what he was goin gto have to pay for it. He borrowed \$7,000 from Brown. The witness has approximately \$7,800 to \$8,000 of his own in the business, separate from Brown. The terms of his note from Brown were that he would pay them \$150 a month until paid. He has a payment schedule. The rate of interest he believes is 6 percent, but he's not sure. The \$150 does not include interest.

Q. When did you formally agree to be a Brown franchise dealer?

A. I believe that would have been on probably March 11 or 12, that I definitely knew that I was getting the store; and then I came right down and made the loans and everything.

Hearing Examiner Creel: Well, I don't quite understand this. Brown certainly had to understand that you were going to be on it before they made the loan.

The Witness: There was absolutely nothing said.

By Mr. Rogal:

Q. About going on the Brown franchise program?

A. That's right.

Q. They did not connect the two together?

A. Well, I can't say what they connected together.
[fol. 334] Q. But in their representations to you they did not connect the two together?

A. No, they didn't.

Q. Was there any talk about the lines that you were going to carry in the new store?

A. At that time?

Q. Yes. Or with Pinnick prior to the purchase, or any-

thing like that.

A. Yes. One day—it was just about the time we closed the deal—Bill asked me what lines I was going to carry in each price category; and I told him at that time that I thought I would stay with the same lines in the store because, after all, the store was 31 years old and had a reputation, so why give all that up.

Q. By that did you mean you were going to carry the—did you tell him you were going to continue to carry Crosby Square and Buskin?

A. No. I definitely made up my mind I wasn't going to carry Crosby Squares.

Q. How about Portage? Did you tell him you were going to continue the Portage line?

A. Frankly, I don't think work shoes lines were discussed at all.

Q. Was Williams at all?

A. Well, like I say, I had made a decision that I was going to go right along with the lines that were in there and feel things out for myself. And I did make two buys from Williams.

Q. Did you tell Brown or any of their people that you were going to continue to carry Williams?

A. Yes.

Q. You mean you actually told them that in so many words?

A. I didn't say, "I am going to carry Williams' line." I said, "I am going to carry the existing lines in the store."

Hearing Examiner Creel: And he knew what they were? The Witness: Oh, yes. Sure.

The witness was very familiar with the operation of the store at the time he bought it. As to whether he had access to their records and profit and loss statements or things of that nature he said he didn't even want them, he didn't ask for them. They were available but the business had been run down. The owner had been failing for 4 years, but only bad the last 2, and they just had one girl [fol. 335] in there operating the business and they weren't keeping up the store the way they should. At the time the witness took over the principal women's line in the store was Air Step. In children's, it was Buster Brown. In men's it would be about 50-50 between Roblee and Crosby Square. They are in the same price range.

The order the witness sent to Juvenile Shoe Corporation was for only 2 different numbers. He had looked at the line at the shoe show in April here in St. Louis. He would guess there was somewhere around 17 or 18 numbers in the Clinic line. The reason he ordered only 2 numbers was that he didn't want to buy the thing in the dark. What he really wanted was to have their salesman call on him. He thought he could get to operating on this. It is a pump and a tie and a little tapered toe, which is the biggest thing in their line. Referring to the letter, Respondent's Exhibit 1, the witness said he was ordering 32 pairs of shoes. He was ordering one pair in each of these sizes from 6 to 9 in AA and 5 to 9 in B's, and in two styles.

He thinks No. 308 is the pump. If he sold hissize 71/2 AA the first day he got it he wouldn't be able to service a subsequent customer in that size. As to whether, in shoe companies of this type, that could possibly have had anything to do with Juvenile's decision not to ship this order. the witness said, he didn't see why. He thinks you will find a lot of your big department stores right in the city. huge volumes—there's a lot of shoes that they don't buy but only one of a size. Now that's not true on everything and, as he stated before, this was a request. He just wanted to get these shoes in his store and he was requesting the salesman to come in and show him the line, and he wanted to buy that line. He could get by with 2 shoes, but these were the 2 basic numbers and the fast turnover that vou will sell the technician and the nurse. They have a hospital at Hillsboro. These are the styles that they will use. The two styles.

In the letter, to which Respondent's Exhibit 1 is a reply, the witness asked them to send a salesman to him when he was in the territory. The witness does not have that letter. Respondent's Exhibit 1 came from the witness' [fol. 336] files, but he does not have a copy of his letter to Juvenile. But he saved this letter.

The following question and answer appearing at page 822 of the record was read to the witness:

Q. How many companies can you properly deal with?

A. I would say on an operation of my size especially I could only handle one.

Asked to explain the answer a little more, the witness said he used the wrong word there because he buys from several companies. By that he meant when you are merchandising any particular line—say Air Step—if he has an open-to-buy 300 pairs (here the witness was interrupted by Counsel for the Commission saying that he didn't understand the term "open-to-buy"). The witness said that gets into this bookkeeping system which they have with the franchise division. To maintain this turnover that he is talking about for profitable operation there are months that they have to peak. They have to have their

inventories peaked with Easter, and then they will cut them back. So you have certain months that you have more pairage to buy in order to peak at a certain time than at others. That is what they call an open-to-buy. The turnover and the volume of business and the profit structure that you are shooting for allows you at that time to purchase 300 pairs of shoes in that line, in that category.

As to how that relates to his answer the witness said, to the fact that, how could he buy from 2 or 3 or 4 companies when we are talking about 300 pairs of shoes. That's why he said, "in my size operation." He said "company" there when I should have said "line of any one particular company."

Q. Then it is my understanding that in your size operation there would be nothing wrong with buying, say, all your men's shoes from one company and all your women's shoes from another company just as long as you didn't conflict and buy two lines in each category from two different companies. Is that true?

A. If any one company had everything that you needed in that price category, it would be all right to buy from them. But that's why we go into Natural Bridge in [fol. 337] the same price structure as Air Step, because Air Step doesn't cover that type of shoe as well as Natural Bridge does. So you can call it "conflicting" if you want, but really it isn't. There is no conflict of types there.

The witness carries the life insurance that is sponsored by the franchise program, and the casualty insurance on his stock. As to whether he carries this because it is cheaper, the witness said that's not the entire reason. It is a fact that if he burned out, if he had a policy with a local insurance concern there would be a lot of fighting and scrambling over how much stock was in there for a settlement. Under this settlement with this franchise bookkeeping system that they have, when he closes out the month of February, which they have closed out, they know exactly how many pairs of shoes and how much they cost, and that is entered on there, and the insurance company insures you for that amount. There is no question about

it. He does not think that any independent merchant he has ever worked with his this type of bookkeeping eystem. They don't go to that extent. You wouldn't find an independent merchant that would show you a profit-and-loss statement at the end of the month. They don't know where they are going.

Assuming you have the bookkeeping system, you cannot get the same kind of insurance from another company. based on your actual inventory, because he inquired. They cover you for a year's period or a 6-month period, not a fluctuating inventory. They cover you for a flat amount, As to how other companies that he inquired about would determine his loss if he were burned out, he imagined what they would do would be to take your retail receipts-he did not find out. He just found out that he couldn't get it. and this was a cheaper means of doing it, by getting a fluctuating inventory. It's a cheaper rate. In other words. if he peaks at \$25,000 in inventory, he is not going to carry \$25,000 twelve months out of the year. But if he buys from an insurance company locally he is going to insure for \$20,000 for 6 months or a year in order to cover it at its peak, when maybe half of the year he is going to be down to only \$12,000 or \$13,000 worth of inventory.

[fol. 338] The rate varies with his inventory under this program. Under his present program it is based on how many thousand dollars of inventory he has in this month. He pays them in advance. You don't pay them each month. He thinks he paid his for a year. And then to his understanding it is adjusted. As to whether it is just a flat rate for a year, the witness hasn't been there a year since he took the insurance and he can't answer that. All he knows is that he talked to local insurance agents about it and they told him that was the cheapest means of insuring, so he did it. As to whether he said that this was an important consideration or benefit of the Brown franchise program,

the witness said. I think it's a benefit.

To the witness' knowledge, his loan from Brown does not become due if he ceases being a Brown franchise dealer. This schedule is set up for a certain period of time. It was never discussed. Redirect examination.

His loan is now down to \$2,100.

In regard to the letter he received from Juvenile as to whether he had requested a salesman from Juvenile to see him, the witness went to their show room down here in April, 1960, and his wife and he looked at the line. They couldn't get much satisfaction up there. There was just a salesman in the show room, so that is why he went direct to the company, thinking that he could get the line, because they walked out of there without no satisfaction whatever. And at that time he asked the man to send him a salesman, but he never heard from them. And in the meantime he needed the shoe, or a shoe of that type.

LEE VIERA, called as a witness for the respondent, testified as follows:

Direct examination.

The witness resides in Salem, Illinois and is in a retail shoe store business there. Salem is between 6500 and 6800 people. There are two other family shoe stores be-[fol. 339] sides himself, and four other department stores or men's clothing stores, which sells shoes in his community, making a total of 7 including himself. He estimates his store draws customers from a territory 25 to 30 miles north and east and southeast. The witness has been in the retail shoe business since November 23, 1943. He started out in Jacksonville, Illinois for 6 months, Robinson, Illinois for 11 years, and the balance of the time in Salem, Illinois. The name of his shoe store is Doug's Shoes, Inc. He is on the Brown franchise program. He went on the program as Doug's Shoes on January 20, 1960. The store had previously been on the franchise program. It is a family shoe store.

The lines of shoes he carries are, in his ladies line, Air Steps, Life Strides, Smartsires, Town & Country, Heydays, Sandler of Boston, Clinic, Heel Hugger made by Dunn & McCarthy, and Miller's Foot Defenders. That is not I. Miller. In his children's line he has Buster Brown and

Robin Hood; in the men's lines, Hoblees and Pedwins. For canvas and rubber footwear he carries U. S. Rubber and Ball Band of Mishawaka. He also has Daniel Green's house slippers and Nite Aires, Wellco and Nite Life. They are all house slippers. He carries Buskins, the same as Mr. Howard does.

The witness does not stock any Freeman shoes. He has a working agreement with the salesman where he special-orders them. He has Weinbrenner shoes for men in his work shoe line. He does not have Weyenberg and a salesman from Weyenberg has never called on him. His store does not carry any Huth-James shoes. A salesman from Huth-James has never called on him, to his knowledge. He does not carry the Leverenz shoe. A salesman from Leverenz calls upon him regularly. He has never bought any shoes from him. He has looked at the Leverenz line and felt that the Pedwin line gives him as much and maybe a little more. That's the reason he didn't buy Leverenz. It's the same price scale as Pedwin.

The witness carries the line of shoes that sells best in his store. He said, we want customer satisfaction. And [fol. 340] the lines that we feel for the dollar received and the dollar spent, that we want to give our customers. We have a small town and we must have those customers repeat with us.

The witness has heard the term 'line concentration.' It means better inventory, controlling your stock. A tighter line concentration. If he buys from too many different companies it will mean overlapping the patterns, no depth, a lot of styles to show, nothing to show on what you have. By having line concentration it gives you more depth in the shoes that you are carrying.

As to what he means by the terms "depth" or "no depth," he said, take Air Step as an example. They cover a broad field. You can buy high heels with your 4-inch walking heel down to what we call our mama-type shoe. And by concentrating on one line it is much easier to see the whole program in front of you, buy the patterns that you think are what you would like to sell in your store and buy some depth there. I mean buy sizes, buy in good size range; maybe not in all shoes. But also considerable

pairage. I think more customers are lost in not having

sizes than in not having styles.

By having a depth of pattern, that connotes having sufficient sizes to handle the customers. The effect of having no depth of pattern but a wide variety of styles is that you are having a style show instead of selling shoes. You are selling shoes with no shoes to back up what you are selling. The effect on the customer is that they walk in and ask for a certain pattern and if you don't have their size they lose faith in you. And you must have that size in your stock. Not at all times, but you should have it there to where they can buy it.

As to how many shoes the witness has in his most popular size and in his most popular shoes at the beginning of a season, he would have maybe two and possibly three in your 7½ AA, your B's, your 7 doubles, which is the main extent of your selling. That's in the heart sizes. That is two or three pairs of that size of shoe. The total that you would stock may be 32 to 35 pairs of that particular [fol. 341] shoe. That's just one style in that one number, say a high patent leather. Shoes come in more than one style and in many colors. That is a factor when you are stocking shoes. This time of year you would probably buy a lot more of a patent leather shoe than you would a light green or a light pink, which is a fringe item in their business, and you buy in short-run sizes on those particular colors.

Inventory is a critical problem in shoe merchandising. In a town of 6500 to 6800 people you have a certain number of pairs that can be sold in that area, and stock control is very important. By overbuying you can't survive. The witness tries to achieve at least a 2.5 turnover on inventory. He does not always achieve that in all of his various styles. When he does not have proper turnover he tries to promote the shoe in advertising or maybe put it out as a special sale item. If the shoe is not moving, he definitely would not buy it the next season or resize it. That is what you call a performance of a shoe, whether a shoe sells or not.

"Resizing" is one thing most every shoeman does possibly every Saturday night on his better shoes that are moving. They send in an order sheet to the company on sizes to be restocked for their stores. That is a reordering of shoes, replenishing your stock. The witness replenishes the stock one a week on his basic patterns; not on all shoes. He is able to do that just on in-stock items only. An in-stock item is a shoe that is carried by a shoe company in stock in their factory. All shoes are not carried in-stock. The other type of shoe contrasted with in-stock shoes is called a makeup shoe. You are not able to resize on makeup shoes. On some items resizing would be a seasonal order situation. On your basic shoes you probably resize each week, throughout the year pretty generally. That resizing operation helps maintain your depth of patterns in the patterns that you like to keep in your stock.

The witness buys the various Brown brands of shoes that he mentioned because they are highly successful in his community, well accepted, and they do make money for him. He has not been required to buy those shoes in [fol. 342] any way while he is under the Brown franchise program. That is a matter of his own choice. If those shoes did not perform he would not continue to buy them.

He would feel free to let them go.

He has heard the term "hot-shotting" used in shoe merchandising. That means picking out maybe one single shoe out of a different line and playing that one shoe, trying to find the fastest number in that shoe or the best seller. Based on his experience in the retail shoe merchandising he would say that is not a sound way of shoe merchandising. The reason is because you are tying yourself up to too many companies, and unless that shoe is awfully good you have lost money. It's like a horse race, like trying to pick a winner. By buying from too many companies you get into stock control inventory problem, overlapping of patterns, maybe buying the shoe that you see in another line which compares very favorably to the one you have already bought. A likely result of that is that one of the two shoes will sell and one won't. that shoe goes on sale and you have lost money. the reason why it is not an advisable practice. The witness does not follow the practice of hot-shotting.

His store handles U. S. Rubber and Ball Band rubber goods and footwear. He buys most of his men's from U. S. Rubber and most of his ladies' from Ball Band. In his purchasing of these rubber goods he deals directly with the salesman from the company, a different salesman from each company. He chose two different rubber companies in this type of footwear because both companies were in the store when he purchased the store. They are both highly advertised and both good, and the witness has just more or less split the business between them. Their prices are competitive.

The witness thinks the general public knowing the brand-name through advertising, aids in the sale of shoes. Brand-name advertising is a help to a retailer, especially in those lines. The witness does not stock only nationally advertised products, he buys other products that are not nationally advertised. Preselling of brand names is a

help to the merchant.

[fol. 343] He has never been told by any representative of Brown Shoe Company what shoes he should buy or what shoes he shouldn't buy. He makes that decision of his own free will. The things about the franchise program that made him want to participate in it are the services rendered to him through the bookkeeping system, the help of their field representative in helping him make his buying guides, and also Brown's product. He means he is definitely sold on Air Step, Life Strides, Smartaires, Roblees, and Pedwins, and so on. A buying guide is the same thing as an open-to-buy. A buying guide is to give them X number of pairs, based on performance of the store and dollars and cents that they should buy for that particular season coming up or that particular season they are in. That is the same as an open-to-buy, which he calls a buying guide. This is in connection with restocking for peaking his inventory. It helps him on his restocking. It shows him where to buy and how much to buy. The fieldman helps him prepare that. It is a guide to the witness in the amount of his purchases. He makes the decision himself as to the amount of the purchases. In preparing the buying guide he is not in any way limited or restricted as to what lines of shoes he should buy. That is his own decision. It he wanted to buy other brands of shoes than Brown, he has never been told that he shouldn't do so.

The witness carries Clinics. He has never carried the

Lazy Bones children's shoes of Juvenile. He has never

had a salesman call on him in regard to that.

Four or five years ago they had some Deb shoes in the Salem store. They discontinued those because the performance was not up to what they wanted. Mr. Inges, their general supervisor, felt that the shoes were not performing well, and he took them out of all the stores. The witness is referring to when he worked for McCoy Shoe Stores. At that time the McCoy Shoe Stores were a group of stores in Illinois owned by Mr. Dick McCoy a corporation, Dick McCoy was president. Mr. Inges was the general supervisor. Those are the stores that the witness referred to as having previously worked for in Jacksonville and Robinson. They were on the fran-[fol. 344] chise program the whole time he worked for them, and at the time the Deb shoes had been carried by the store.

The witness uses the window service under the franchise program on the women's window in his store, but not the men's. He has had occasion to use the architectural service. He carries the fire and group life insurance. The fire insurance is on the fixtures and stock. He does not have that on his building. He has a local concern on his building.

There is no restriction or requirement whatsoever that the witness knows of, that he continue on the franchise

program. He could quit it at any time.

[fol. 345] Cross-examination.

Salem is about 6500 or 6600 to be exact. It is especially a farming town, and the oil industry, a Texas refinery is there. Brown Shoe Company has a plant there which

employs about 600 people.

The witness was a manager for McCoy's up until about January of 1960, at which time he bought a store from McCoy's. Now it's named Doug's Shoes. They have a corporation. He is a stockholder in the corporation. He did not receive any financial aid from Brown when he bought this store.

In his women's line the witness mentioned Town &

Country, Heydays, Sandler of Boston, Clinics, Heel Huggers, Foot Defenders and Buskins. He had Life Stride.

Air Step and Smartaire from Brown.

[fol. 346] He also testified it is desirable to concentrate because of inventory problems and that sort of thing. Asked to explain why he had so many lines of women's shoes, the witness said he carried Buskins only in the summer for their bare-type shoe, barefoot sandals. He does not buy the line in the wintertime whatsoever—he buys his Buskins because Brown and the other companies do not furnish him with a sandal-type, open-type shoe for summer, and that line he buys from them only in the summertime. He does not buy from Buskin in the fall of the year at all. These other lines have always been in the store. They have carried them in there for years, they are accepted, and he sees no reason why he should change.

Asked how he got around this inventory difficulty that he said he obviated by concentrating, the witness said he knows exactly what he wants to buy in each line from these particular companies. It is not necessarily just a few numbers. He is mainly a style store, and he needs these style-type shoes. He buys what he needs in each line, maybe 5 or 6 patterns, 7 in some instances, maybe more, not necessarily in each one of these. He can't tell you how many he buys from each one. By the term "needs" the witness means, "to satisfy his customers' needs, what they

desire."

This differs from the practice of hot-shotting, which to the witness is buying one or two patterns and trying to buy the right shoe. He doesn't do that. He is buying and stocking Town & Country in 4 different patterns. He doesn't have quite as much as depth in them as he would have in other lines. Town & Country is one of his shorter lines. He carries those particular 4 numbers from Town & Country, basically because they were in the store when he bought the store. The name of Town & Country means something to the town of Salem, and it's a well accepted shoe. These 4 patterns are high-style shoes, in the flat line, growing girls' flats. He doesn't buy their dress shoes. These are not the same patterns that were in the store when he bought it. He has changed that. Whether he plans to continue to buy Town & Coun-

try in 4 or 5 different styles depends upon the performance. As long as they sell he is going to do [fol. 347] that. Town & Country are in the price range of \$8.99 to \$10.99, in their flat line. Their dress shoes are higher priced. That price range does not correspond with any Brown line he has in his store. If he bought Life Stride flats it would probably correspond with them.

He has 3 patterns of Heydays which he is contemplating dropping because the shoe has lost much of its customer acceptance. He has reordered that since he took over the store. He has been carrying that both as manager and as owner for about 5 years. He always carried just a limited number of patterns. He found that profitable to do or he would not have continued. The Hevdays are an in-between heel. It's not exactly a flat and it's not a high heel. It's a ten-eighths heel. It is more of a walking type shoe, something your mother might like. It certainly wouldn't be a high-fashion shoe.

As to Sandler of Boston, they make a wonderful line of hand-sewn moccasins, a girls' type soft shoe and dress flats. He stocks a few of both their hand-sewn loafers and their dress flats. Brown has something equivalent to this Sandler shoe in about the same price range. That would possibly be in the Life Stride. Combining the two categories of Sandlers, he carries 8 patterns in his store.

In the Clinic line the witness carries their nurses' type

shoe only. He has 5 different patterns.

The Heel Hugger he would compare to Godman shoes that were discussed today sometime. It is a lace-type oxford, walking oxford, for an elderly lady. He carries 4 patterns in that shoe. Life Stride makes a tie or lace shoe, so does Air Step. Air Step is not the same price range. It is much higher. Brown does not make a shoe which competes in price and style with Heel Huggers. Not unless you would go into a higher price.

Miller Foot Defenders is an orthopedic-type shoe for a lady, priced above anything Brown Shoe Company has.

The term "makeup" does not mean a shoe that has your own name on it. A makeup shoe is a shoe that is made [fol. 348] with no stock behind it at the company. It's made strictly in that pattern for the stores. The witness buys some makeup shoes from all companies. He can't reorder or fill in sizes without making 36 pairs, which would take another 3 months on a makeup basis, which would probably be out of style by that time. He imagines all companies offer makeup shoes. Brown Shoe Company does.

On his purchases of U. S. Rubber goods, the witness remits to Brown Shoe Company. He has been buying U. S. Rubber goods ever since he has been in business for himself. When he was in the Salem store of McCoy's, they also bought U. S. Rubber goods through Brown. When he was with McCoy's, that store remitted to the home office and then they paid all the bills from there. As to whether there is any advantage to him as a Brown franchise dealer with respect to the U. S. Rubber purchases, he said, I get my 2 percent, just like I do from Ball Brand. No extra whatsoever. There is no advantage with respect to dating order. The same dating from both companies.

The witness testified that he felt that it was of value to him if the brand names of shoes were nationally ad-

vertised.

[fol. 349] W. C. MacDonald, called as a witness for the respondent, testified as follows:

Direct examination.

The witness resides at Toledo, Ohio. He is employed by Brown Shoe Company as a field representative and is going on his fifth year in that capacity. Before that he was a fieldman for Internalional Shoe Company for 3½ years, under the Merchant's Service Plan. Prior to that he was in retailing, men's, women's and children's shoes.

His territory as a Brown fieldman covers eastern Michigan and the State of Ohio. There are 57 franchised stores

in that territory.

As a field representative the witness assists the merchants with their retailing and merchandising problems. He assists them in the preparation of their open-to-buy forms and guides, to the end that they may realize a fair profit on the capital invested. All open-to-buys are based

on a man's capital and physical space in the store. All his open-to-buy requirements are set, based on previous performance and capital and experience. The witness works out an open-to-buy that will fit into the dealer's capital requirements and to meet his performance requirements also. This occurs twice a year. He is not able to do this personally with all the franchised stores in his territory. They make it a point to contact their stores twice a year minimum, and some of them they contact many times more. This would be at the stores' request, on their being placed recently on the program. They need assistance in record systems, book-keeping system and the stock control records. Originally the witness set up the records, accounting system, for the dealer and then returns in a month, or two, three, if necessary, to help him get out his monthly report. After the witness has done that with a franchise dealer for a period of time, the dealer does it himself from there on out. The witness visits more frequently those franchise dealers who are most recently on the program.

[fol. 350] Another area the witness covers is stock analysis, analyzing lines to see what is performing satisfactorily and profitably for the dealer. They make an analysis, for instance, of the ladies' shoes in the dress category by size and width, and they can point out a man what he is buying wrong. He is buying either too many odd sizes, either starting them too low, 4 or 41/2, and running them too far, to 91/2 or 10. Maybe he is buying the wrong width or buying too many "quads" or maybe not enough, whatever the analysis reflects. The stock analysis would not have a reflection on lines, but they can analyze that and break it down further by lines. That is done in the perpetual inventory, or monthly report. The purpose of that is to give the dealer the performance outlined. From that they make up his opento-buy. The dealer determines what he is going to buy. With his assistance, the fieldmen determines the trend of the store, whether to make an increase or a decrease. and the open-to-buy by pairs is set up on the same basis. The dealer absolutely makes that determination.

In reference to the stock analysis and open-to-buy, the

witness also has the occasion to analyze the dealer's inventory situation at the same time. Inventory is very important factor in retail merchandising because the dealer can be carrying too much or too little inventory. effect of too much inventory would create a situation of low turn-over of merchandise and in many cases it would create a financial problem of being unable to pay his bills. If it is turning over too fast, it would show he is not buying rapidly enough. Stock analysis reveals the "turn" that the dealer is getting on his stock, and whether he is buying wrong, or whether he is buying his stock in properly balanced fashion in sizes and widths, and not too many end sizes, and buying them right in the heart sizes. That is what has been referred to as carrying a pattern in depth. That should not be done on all shoes that a man carries in his store. You pick out the patterns and styles that you are going to concentrate on, and you should carry them in size and depth.

Now, to explain a little further that term "depth." you are not going to stock and concentrate, you are natu-[fol. 351] rally going to spread yourself out over a large area. You have so many shoes that you are in a position to buy, which means that you are going to spread yourself thin. In other words, over a period of two years you would buy maybe 15 pairs of shoes per style. And that would mean that starting at about 61/2 to 9 you would buy one pair of each in a AA width, in a B width you would start with a 51/2 or 6, and you would buy that in each size through 9. Then if a lady comes in and buys one pair of 71/2B or 71/2A, the merchant is out of a size. The time for fill-in now would be from 10 days to That means the merchant would miss innumerable sales by spreading it out that thin. concentrates on lines and stocks them in depth in the heart or popular sizes, the dealer would be able to buy that particular shoe or size, maybe 3 or 4 pairs to a size, which would give him ample time to replace the merchandise in the event one or two pairs in that size were sold. That is resizing your stock, to reorder it for the purpose of filling it in. If a dealer has that backed up in depth he is safe because he can place a reorder and

without 10 days he will have that size to replenish his stock and keep stock on hand at all times, not miss a sale. That's the function of what the witness has described as stocking in depth, and concentration.

When you talk about concentration, it doesn't relate to any particular line. Whatever the dealer decides he is going to concentrate on should be handled in the same fashion, regardless of lines. The effect of concentration from a merchandising standpoint is a saving of sales and an increasing of profit. If the dealer doesn't have the shoe size and the customer walks out, he misses out on the sale. In other words, its the making of a sale and the saving of a sale in the sense that you don't lose it. In being able to concentrate on a line you are able to carry a greater number of sizes and you eliminate the overlap that occurs with other lines. If you buy too many lines and patterns, you will find a similarity of style in all lines, so if you are not on a concentration program you are going to buy overlapping patterns. And if you buy your overlapping [fol. 352] patterns in other lines, then it will result in one thing—a duplication in styles and an overstocking of your inventory. You would be limited in the number of sizes you could carry if you are not on concentration, that's why concentration program is a sales saver.

The witness thinks the practical limitation in not stocking more than one line would be the dealer's financial ability to go overboard on these things. The witness counsels with a dealer in regard to his capital situation and his inventory turnover. He makes recommendations to the dealer in this regard. For instance, if a dealer is inclined to buy too many shoes after they have made the analysis and the open-to-buy and they have gone over it with him, they can point out to him where he is overbuying in connection with his capital and they would recommend that he not overbuy. That is as to the overall picture. The witness very often makes recommendations with respect to performance of lines. He cited an instance of a store in Michigan. A man bought the store with the idea-it was primarily a men's store before he bought it, and he thought along the lines of making this a men's and children's store and accordingly he put in Buster Brown and Robin Hood shoes. After two seacons and analyzing the stock and counseling with him, these two lines, Buster Brown and Robin Hood, were not performing. So they tried promotional methods and advertising to get the lines to perform. And upon the occasion of his next visit to the store, the witness recommended to the dealer that he discontinue the two lines because they were not performing and not making a profit. This store had operated on a limited basis on children's shoes, but the dealer wanted to go all out and increase it.

Most of the stores in the witness' territory are familytype operations. His counseling is in respect to the store's entire operation in regard to the sale of shoes. As to whether the witness makes a stock analysis and advises the dealer for Brown lines only or for other lines, the witness said the records reveal the performance of all lines in that man's store. The witness is acquainted with the [fol. 353] performance of the Brown lines in the stores in his territory. He has information with regard to styles and patterns of Brown brands. The Company periodically sends out information on the best sellers. He gets performance information in regard to particular styles of Brown shoes. That information aids him very materially in his work as a field representative. The experience that he develops in his efforts with these franchised stores in his territory in regard to the performance of Brown brand shoes in these stores aids him in his fieldman's work. Dealers naturally want to stock the best numbers and good sellers, and with the information he gets collectively from the territory, he is in position to pass that information on to the dealer. That is an important function of his service as a fieldman. He cannot do that with respect to other brands, manufacturers brands of shoes. He has no knowledge of how they are performing.

The witness does not have inquiries made to him by the dealers as to what lines of shoes they should stock. He just deals with the dealer in regard to the administering of this record system and the stock analysis and the open-to-buy schedule, that's his primary duty. As to whether from that the witness has the occasion to advise the dealer on any purchasing plans that the dealer might have in the future, he said only to the extent that they might have the open-to-buy, which is projected on a 6month basis. After it is once projected and once explained to the dealer, it is entirely up to the dealer as to what he may want to do. Another Brown salesman calls on him to sell him shoes. The witness is not selling shoes. The witness is just counseling the dealer on his merchandising program and that phase of the business. He does not call on any accounts other than franchised accounts. Dealers in his territory do not ask him what brands or lines of shoes they should buy. He does not have the occasion to suggest lines or brands of shoes to them. The witness limits his function in his territory to assisting the merchant in his planning, based on the use of the records that he keeps under the Brown franchise program. He has never told a dealer he can't buy a line of shoes. It's entirely up to the dealers.

[fol. 354] Cross-examination.

There has been no change in the Brown franchise program, or the witness' instructions with respect to it, since. he first went on the program. As to instructions with regard to conflicting lines in a Brown franchise store. he has no instructions with respect to conflicting lines. They advise and analyze the line situation and make a complete picture to the dealer. The dealer makes the decision on what he wants to do. The witness is urged to encourage the Brown franchise store to eliminate conflicting lines only if there is an overlapping situation. The comparison is shown to the dealer between an overlap and a complication of the Brown line and someone else's. The dealer makes the decision on what line he wants to keep. All determination of lines carried by the dealer is left entirely up to the dealer. The witness has no instructions to urge that the dealer discontinue carrying conflicting lines.

Hearing Examiner Creel: I don't know whether you answered that right. He asked you if you had ever received any. You say you have none now.

The Witness: I have no instructions. Naturally at one time we did observe any outside lines that might be in

the store, but we were not instructed to tell the dealer to eliminate those lines.

[fol. 355] By Mr. Rogal:

Q. Are you familiar with this type of report form?
A. Yes, sir.

Hearing Examiner Creel: What are you referring to, Mr.

Mr. Rogal: Excuse me. This is Commission's Exhibit 31-A.

By Mr. Rogal:

- Q. And on the bottom of this, underlined and in full caps, it says, "To encourage concentration on B. S.——"
 - A. Brown Shoe Company.
 - Q. "-B. S. C. lines and elimination of conflicting lines."
 - A. Naturally, we try to sell our lines. That's only normal.
- Q. Yes. But with respect to the rest, "And elimination of conflicting lines," do you consider that an instruction?
- A. If so, I have never carried it out. I have never asked my dealers to discontinue lines.

Some of the witness' 57 Brown franchise dealers carry a principal line other than the line of the Brown Shoe Company. There is more than one, he can't tell all the names of those stores. He knows Farrar's Shoe Store in Clyde, Ohio, and also the Carlisle Shoe Store in Sandusky, Ohio. The Farrar Shoe Store at Clyde are handling Red Cross Women's shoes. They have the Air Step Brown women's line. They sell more Air Step shoes than they do Red Cross. The witness didn't say it was the principal, it was comparable to Brown's line of shoes, a conflicting line. The witness knows of one at Wapakoneta, Ohio. In the men's line he is selling Weyenberg and it is selling very comparably to Roblee.

The witness was asked whether some of Brown's franchise shoe stores are not family shoe stores, but just men's. He said, not exclusively men's but in the particular town that he had reference to on direct examination, prior to this man purchasing this store the major volume was in men's lines. He handled some children's shoes and some

growing girls' shoes. At the time he bought it he decided [fol. 356] to change the operation and handle more children's shoes and increase his volume. It was not a Brown franchise store before it was bought. It is the Sherman

Shoe Store at Birmingham, Michigan.

That man has another store in East Jefferson, and the witness imagines Mr. Sherman has been on the Brown franchise plan 27 years. He just bought a new store in Birmingham a couple of years ago. He has been on the plan some 20 years and in this store 2 years. The store in Birmingham is now a Brown franchise store. The only women's shoes he carries are sport-type for girls. It is now out of the children's shoe business. They recommended that it discontinue the children's line. The Brown lines it carriers now are Roblee, Pedwin, and a few Glamour Deb girls' flats. That is all the Brown shoes. The witness can justify his time in helping that man, based on his volume and shipments.

Q. If he went into the women's line and took a line other than Brown and became a substantial women's dealer, would you continue to recommend that he stay on the Brown franchise program?

A. You mean, by just taking on one additional line?

Q. Suppose his women's line became completely other than Brown; he just took on—

Mr. Burke: Well, I think that's a sort of speculative type of question. I think he ought to confine it to an example, if he knows one.

Hearing Examiner Creel: Well, I think it's speculative, too; but if the witness can answer it, I will overrule the objection.

A. I don't think I could answer that until I was confronted with a situation of that kind.

By Mr. Rogal:

- Q. Well, I am assuming, of course, his volume would remain the same on the men's line.
 - A. Yes.
- Q. As far as justifying your expenditure of time, is there anything other than the volume that a store does?

A. Yes. Put you realize, of course—and I think it is quite [fol. 357] obvious—that if a dealer doesn't handle a Brown Shoe Company line there is no point in our rendering the service. You know, of course, that we do want to make distribution.

Q. There's no question about that. But what I am trying to find out is why you wouldn't continue to render the

service.

A. I don't think that on another line of shoes he might bring in there I would be in position to render him any service.

Q. But to continue to render him a service on the men's line, would that change the situation?

A. I don't think it would.

Q. In other words, you could still profitably spend the time there, regardless of his other lines, as long as his volume remained where it is today on the men's line?

A. On our line of shoes.

Q. Yes. On the Roblees and Pedwins and Robin Hoods, Ibelieve you said.

A. Yes.

The witness is not familiar with what the Brown salesmen's service consists of. He talks to them a lot, but not relative to service they render accounts. They are not just pure order takers. There is a liaison between the witness and salesmen who service his accounts. He works with the witness on open-to-buys and so on, so he won't over sell them.

As to whether the witness has in his territory 2 Brown franchise stores that compete with each other, he said they do have cases—he doesn't recall one in his territory right at this particular moment—of a department store that will be a family operation, and also a family-type shoe store.

[fol. 358]

March 10, 1961

RICHARD PRATER, called as a witness for the Respondent, testified as follows:

Direct examination.

He lives at Glen Ellyn, Illinois. He is employed by the Brown Shoe Company as a field man. He has been a field man, working directly for the Brown franchise division, a little over 7 years. Mr. Johnston is his immediate superior. He covers the territory of Northern Illinois, Northern Indiana, Western Michigan, the Southeast part of Iowa. He covers no part of Wisconsin. There are approximately 51 stores in that territory which are on the Brown franchise program. He tries to call on all these stores during the course of the year. The frequency of these calls varies. There are some stores that he may get to just once a year, and there are other stores that he may get to 3 or 4 times a year, based on their needs and requests for service.

The stores that he visits once a year, he helps with their yearly audit or financial summary, and the other stores that he visits 3 or 4 times a year are new stores where it is necessary for him to explain the bookkeeping system and help with the monthly reports and helps in any other service which the store may wish.

A field man's work covers quite a broad field. Primarily, they work to further the sale of Brown Shoe Company products by establishing new stores. Part of their work in connection with that is surveying the towns or locations of towns as to whether they feel a shoe store would be successful there, whether there are too many of them there to start with, or actually what the potential of that town is in regard to establishing a new shoe store.

In regard to establishing shoe stores on the Brown franchise program, the work of the fieldman varies. They help the stores in merchandising; they help and assist them in any way they can in plans or purchases for the year, in buying guides. Shoes are purchased twice a year by retail-[fol. 359] ers from manufacturers. In other words, a salesman will go out for major purchases twice a year. He visits them in the fall to sell spring shoes and he visits them in the spring to sell fall shoes. This is characteristic of the shoe business. Shoes are made well in advance. It takes quite a while to build them. This determines in a lot of instances the number of shoes that a company will

stock; that a shoe retailer has accepted these particular shoes.

The witness does not actually sell shoes himself. As to whether he tries to time his calls so that he will precede the call of the Brown salesman, the witness stated, in the preparation of helping them or assisting them in the preparation of their buying guides. That covers all lines of shoes in a particular dealer's stock. Actually there are two sections to a buying guide. There's actually an operating guide, which covers the money and expense control. That's an operating guide. That is where the merchant feels that he wants them to help him in determining that he spends the right amount of money for advertising and the right amount of money for his help, such things as that. That is not covered in the dollar guide. Then the rest of the buying guide has to do with the pairage control. The bookkeeping system supplies them with an absolute picture of their operation since they have been on the franchise program. The bookkeeping system of the Brown franchise program is furnished to the dealers on the program, free of charge, as a service of the company. This is part of the pairage control mentioned.

As to what pairage control is, the witness said, in our bookkeeping system we can show exactly how many pairs in each classification of shoes that man has sold each month, and we know his ending stocks from the monthly report. So when we go in to work with a dealer and assist him, we will sit down and list exactly the number of pairs of a particular classification he has sold that month. And then we have his ending stock. In other words, we have a picture of that particular classification of shoes for the whole year. And from that we know how many pairs of shoes he has sold, and from that we know what his average stock is for the year. And from that we can determine if he is getting the turnover that he should on a particular [fol. 360] line of shoes. And we do that for every line of shoes he carries in the store.

Turnover is a most important factor in the shoe business. The amount of business a person can do, is based on how much money he has, and the line of shoes is based on how much money he has. So, after we find the net worth of the business, from that we can determine,

through past experience of Brown Shoe Company over 36 years as a division, how many lines of shoes he should carry in that store based on his capital, based on his plant size. We feel that two times is a good turnover for a family-type shoe store, and most dealers will agree—and some of them want more turnover because that makes more money. The two times turnover is an average. The different classifications of shoes will vary. Children's shoes and men's shoes are a little slower turn than women's style shoes.

The picture is constantly changing in the shoe industry: and I feel that that's one way we can help the independent dealer, because really he is a sort of lone wolf out there by himself. Actually all he has to go to, if he is an independent, is to talk to another independent, or talk to a salesman. Now, a salesman is a lot different than a field man. A salesman has his job, and that is to sell shoes. As fieldmen our job is to see that those particular stores make as much money as they can. Everybody is in business for one thing, and that is to make money. So we try to assist him in any way that we can, in any services he asks for, to gain this control. We have nothing in mind. except for that guy to make money. Pairage control shows the performance of the shoes in a man's store. That's the turnover. Whether the man is making money on his shoes. It is all determined by turnover.

There are very few staple shoes any more in women's and growing girls'. The witness has been in the shoe business since 1933. Years ago it was very easy to run a shoe business because you just had to have a few shoes, and have enough of them, and that's all there was to it, because that's all that was offered to the people. [fol. 361] Today the picture has completely changed. It used to be that for a growing girl all you had to have was a loafer, a saddle shoe and maybe a mocassin-toe oxford. That was the stock for a growing girl. Today the picture is entirely different. The fad changes over night. Today you have to be on your toes, know what is going on, and be in a position competition-wise to buy these new shoes as the demand is created for them. The staple shoe would be good the next year, where today the styles change so fast you just have to get rid of them, put them on sale, because the kids don't buy them any more—or the women don't. This is true of growing girls' and women's shoes, but the fastest change today has been in growing girls' shoes.

Women's shoes are sold on the basis of style, fashion and comfort. These styles and fashions change from season to season. This is getting to be more and more true in men's shoes all the time, but men's business is more staple. There are still a lot of men who want the same shoe over and over again. But the younger men are buying more styles all the time. They don't buy them because their shoe is worn out. They buy them because it is a new style.

There is a tough situation regarding children's shoes too, because what happened in the growing girls' shoes is happening in the misses' size. This would cover the girl that is in grade school. You have to merchandise your 12½ to 3 line of children's shoes the same as you do your growing girls' shoes and your women's shoes. It is constantly changing, and you have to keep on top of things all the time.

Regarding children's shoes in the boy variety, that situation is more staple, too. Actually in boy's shoes—the 3-to-6 run—your boy will be in there for about 2 pairs. It isn't as important a facet of business as children's shoes or misses' shoes.

Shoes for the female sex are a less staple type than the ones for the male. This is due to style changes and fashion consciousness on their part, and these factors are [fol. 362] constantly changing. In his work with the dealer. the witness is able to give him advice on that score. For example, they are sent from the office a list of the 12 bestselling patterns in each line of shoes. The lines referred to are all Brown Shoe Company lines. It's a good guide because if it's good here it is good in every place. In his work as a field man he becomes personally acquainted with the performance of various lines in his territory. He is more familiar with Brown Shoe lines. He does not have the same information, for example, on Red Cross shoes, as the information that he gets from his home office on Brown shoes. In traveling to various stores he develops some information on his own account as to how styles or lines of shoes are performing. A particular style

that's good in one particular price line is good in all lines in that particular category. It seems like all manufacturers more or less follow a style that is set by some high priced line of shoes where a promoter takes off, and these other companies adopt it. And maybe it's a year later, but they all have it, and the patterns are all similar. It doesn't mean they will all fit as well, or will wear as well, but it is

a general practice.

He has 51 stores in his work as a field man. Those stores all stock Brown shoes in various lines. He keeps abreast of how those lines are performing in those stores. When he goes in to help the merchant prepare his buying guide, then he would have a picture of a full year's operation, a picture of the performance of a whole line for a year. The merchants prepare a monthly report, one which is sent to the field man, one which is sent to the company, and on the back of that is the breakdown of the performance on each line for that particular month with their ending stock. This gives the fieldman information as to how lines or styles of shoes are performing, on a monthly basis. That report is not received from all stores. He would say on the average about 35 stores would send it in. He won't get one each time from one, but maybe he will get one once in a while from all of them.

This information helps him in talking to the stores throughout his territory. From these reports he can [fol. 363] analyze the business. On the report there's a perpetual inventory, so the man knows at the end of each month, in dollars and cents, exactly how many pairs of shoes he has. Then when he calls on a dealer and helps him on his buying guide, he as a fieldman is informed as to the performance of Brown shoes particularly, and that information is important. It is the control of the dealer's business through using these figures. The dealer determines everything.

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The buying guide is sometimes referred to as an open-tobuy. It is a set of statistics that the dealer prepares, from figures that came from his monthly report. After the dealer prepares it they sit down together and analyzes the performance of lines and talk things over. The witness makes suggestions as to how he can better his opera-

tion in whatever particular line they might be discussing. If there is one particular category that is not performing and the stock is down, they will make an analysis of that particular category. If that is a Brown shoe line he is equipped with information to discuss that with the dealer. If it's a line of another manufacturer, he is not in the same position to discuss that with the dealer. He knows from the monthly reports how the dealer has done on these shoes. He doesn't have the information as to what is the best-selling pattern or line or anything like that. He is limited in that information to the experience he develops on his own in his territory. That is because the only information he would have on it would be the information he got from the dealer himself, as to which is the best-selling pattern. He is just not around the lines enough. He does not have the overall picture. From the buying guide that they prepare together the dealer determines the amount of shoes that he is going to buy for his next season. The dealer determines that himself. It is the dealer's decision as to whether he follows it.

Inventory is important in the shoe merchandising business. The amount of business a man can do is determined by the amount of capital he has. If he places orders for [fol. 364] too many shoes then his inventory becomes too high, and if the business doesn't materialize as he hoped it would, he might get in a poor cash position. He might not be able to pay his bills in time and lose his discount. The amount of business a merchant can do is determined by the amount of capital. That is the sole factor.

The Hearing Examiner said that it seemed to him that the amount of business he would do would be determined by what he can sell, not what he can buy. The witness replied that if he can't get the buying information he isn't going to sell. If a dealer has so much capital, he has enough money to buy only so many lines of shoes and that's all, if he wants to carry them as lines. This is assuming a customer acceptance.

Line concentration means that a man will concentrate on one particular price bracket on one particular make of shoe, or a line of shoes, that completely covers that field. This is related to inventory in the respect that he can only concentrate or only have so many lines in his store, and if he tries to buy too many lines he won't be able to concentrate on any. That results in not being able to fit customers correctly, because the dealer will have to spread out his money or his capital or buying power to the extent that he is not buying the depth of shoes that he should, that are the best-selling patterns. Not buying the depth of shoes that he should means not buying the sizes and having them when the people want them.

Line concentration is important because that is how you not your money, by having the shoes on hand when the customer is there. By buying shoes in depth and concentrating on fewer patterns in a particular line of shoe, you are able to fit more customers and that means that during the peak season of the year, when your customers come in, if you have bought your shoes correctly in depth, and you have concentrated on as few patterns as possible to satisfy your customers, you will sell your shoes at a profit, which is what you are striving to do. This is a matter that the witness encourages dealers to follow, because he is interested in them being successful [fol. 365] and making a profit. And because he furthers Brown's sales that way. Concentration in a line is important.

Sometimes he runs across a situation where there are slow moving lines in a dealer's store. From their analysis if they find a line is not performing as it should, they will make a size and width analysis of a particular category. That is a sheet that has all sizes listed that shoes are carried in. They go to the shelf together and run a composite size check of all the patterns together. When this is done he may be able to find that in some instances, the dealer has been buying wrong sizes and there are too many shoes in that size. And the reason the shoes aren't selling is that the sizes aren't selling and the sizes are small sizes or large sizes. The dealer is not buying shoes in that particular instance in the correct sizes. It could be that the dealer was a little optimistic when he bought these particular over sizes or small sizes. Fit and size have a great deal to do with the sale of shoes. Style has a lot of effect, too. It has an effect on the slow-moving line. It could be that the shoes are too old in style. Overlapping styles could have an effect on the slow-moving line. If the dealer would buy the same pattern shoe in every price line, there could be an overlap in that way, and he just had to move that one particular pattern. For example, in women's shoes, if a dealer had three price lines and bought the identical style in each line, that could cause an overlap. And in turn this would cause a slow-moving item.

If you bought overlapping styles in the same price line with two lines, that would be worse yet. In comparable lines the best-selling shoe in one line will, 9 times out of 10, be the same shoe in another line, and if you bought that particular shoe in all your lines, it would just be foolish. It would be foolish in the first place because you would be cutting down the patterns you could ordinarily present to give a variety of offer. By buying this in one particular line you would be cutting out a pattern that

would offer more of a variety of style.

If a man carries two lines of shoes at the same price, there can be an overlap there, too. In the witness' opin-[fol. 366] ion, this is not good merchandising, because the dealer doesn't have a variety of patterns to show the lady. The dealer can't have a variety of patterns where he carries two lines of shoes at the same price because he has just so much money to spend for shoes. He has to spend it to the best of his ability, to try to avoid this overlapping in the same price field or in various price fields. If he avoids overlapping it is to his advantage because he won't have odds and ends left at the end of the year that might result in a markdown. The witness thinks that the dealer is in a better position to handle the needs of his customers if he follows the procedure which he is talking about. He will be able to present a variety of shoes in the styles that he hopes the women will want and buy. Having a variety of shoes in the style he hopes the women will buy means trying to have the best-selling patterns in a particular line of shoes. You can, by buying one line of shoes, give a much broader coverage than if you buy two lines of shoes, because if you bought the best-selling patterns in the other line of shoes you would be buying the same patterns over again.

By broader coverage he means you will be able to have more of a variety of shoes by not having the overlap. He is talking about size and patterns. Patterns in ladies' shoes have something to do with heel heights. But a heel height is not a pattern. It's a different height heel in the same type of shoe. It is an important factor in merchandising shoes because women request different heel heights. Patterns as he ases the term is the particular style of the shoe, the design of it.

Line concentration simplifies a dealer's position in buying shoes. He doesn't think that has anything particularly to do with the dealer's financial advantage. The number of lines a man can carry is based on his capital. He wouldn't want two lines of the same priced shoe in his store if it would take away from him having another line

that he should have.

If you have a slow-moving line of shoes in a store, the witness said, we will discuss the problem with the dealer, and in instances we have suggested that he cut the price [fol. 367] of his shoes if we feel that that is the reason. He doesn't believe he has ever suggested a dealer drop a slowmoving line. They have discussed them but he never recommended really it's the dealer's decision. That's something that the witness can't tell him to do or tell him not to do or anything like that. Dropping a slow-moving line would be a method of curing the situation. If there was no profit in it that would definitely be a way to do it. His suggestion would be up to the man to decide. The witness might say to the dealer, "Here it is. This is what's happening. You've got this amount of money invested, and you aren't making any money." It would be up to the dealer to decide, whether to continue buying or to drop it.

The store at De Kalb, Illinois, called "Leo's Shoe Store", is in the witness' area. It carries Freeman shoes. It is a franchise store. The store has been carrying Freeman shoes from the time it started, in March of 1960, give or take a month.

None of the stores in his area, to his knowledge, carry Huth-James men's and boy's shoes. He has never heard of Huth-James men's and boy's shoes in his territory.

Cross-examination.

Some of the witness' 51 stores have as a principal line in any category a line other than Brown. For example, Rasmussen. Rasmussen's Shoes carry Carmo's shoes in Winnetka, Illinois. Carmo's is a women's line. They are priced higher than Brown shoes. They go from \$14.95 up and are high-styled shoes. None of his stores carry as their main line, in the same price range as the Brown lines, a line other than the Brown line. A situation where one of his stores in any one category drops entirely a Brown line, in men's, women's or children's shoes, but just in one category, [fol. 368] and takes on another line, has never arisen. He hasn't had any instructions on what to do in the event such a situation would arise.

Women's and growing girl's shoes are sold on style or fashion. This means the customers in this category are fashion conscious. It also means that if you don't have the style or fashion they want you will lose their sale, if your salesmen aren't good enough to sell them what you have. As to whether you are somewhat limited in the number of different styles or fashions that you have, if you have only one line of shoes in the store, the witness

said, no, you are not.

Whether it is more desirable to have an additional line in order to get the additional fashion is up to the option of the independent dealer himself. He can decide it that way if he wants to. But it is still the witness' contention, which he has explained. He believes in buying lines of shoes you are able to get the best-selling patterns, and by this depth program you will be able to have the ones that sell. You can't sell everybody that walks in your store, that's an impossibility. But by doing it the way they suggest you will sell the largest percentage. You try to sell them all, but you can't satisfy everybody.

Hearing Examiner Creel: Is it any part of your duties to persuade shoe people to become Brown franchise accounts?

The Witness: To persuade, sir? What do you mean? My job is to sell Brown Shoes Company lines, yes, sir.

Hearing Examiner Creel: Well, that's what I am getting at. You say you call on these 51 that are Brown franchise

accounts. Now I am asking you if you call on people in an effort to persuade them to become Brown franchise accounts.

The Witness: Yes, sir. That's our job, too.

[fol. 369] WILLIAM D. PINNICK, called as a witness for the Respondent, testified as follows:

Direct examination.

The witness resides in Ballwin, St. Louis County, Missouri. He is employed by the Brown Shoe Company as a field representative with the franchise Division. He has been so employed for a little over 2 years, since January, 1959. He has had previous experience in shoe retailing. His experience includes approximately 2 years as a salesman on a retail sales floor with Famous-Barr (or the May Company) at Clayton, Missouri. Previous to that, 2½ or 3 years with Kline's West shoe department in Clayton, Missouri. He had 2 years of service in the Army, previous to which he was working at Kline's downtown in St. Louis, as a salesman.

His territory as a fieldman is Missonri, Illinois, Indiana from Highway 24 south, which runs from the Ohio line to Highway 65 in Missouri. There are 51 franchise stores in the area. As a fieldman, he calls on these stores in his district. He visits these stores on an average of no less than 3 times a year and sometimes more. It is his job to observe and analyze the entire operation in all phases and to recommend any changes which he thinks would be beneficial to the merchant as far as the year-end net profit showing is concerned. It is strictly a recommendation. It is the dealer's business and he can either take or leave any suggestions which the witness might make.

The witness has heard of the term "line concentration." He said that it is a term generally used in shoe retailing or the shoe merchandising business, and that it is a very important factor in retailing. It means where you take a particular brand or line, as you have here, and you more or less concentrate your purchases within this line so that you get

completely away from duplication of types of shoes in various other brands. He thinks this is very important. By concentrating within this line you are able to put maximum pairage purchases within your scope of patterns, which, in turn, you can concentrate in depth the sizes. More sales are [fol. 370] lost in a shoe department and family operation in similar size stores that he services by lack of sizes rather than lack of patterns. You may have 20 patterns in 4 different brands and no size depth whatsoever. When you do this you present any potential customer with a style shoe and are, in turn, unable to fit the customer. So all you have done is do somebody else's leg work for them, and the next store they walk into gets the sale.

He would rather have fewer patterns within a line, concentrate in more size ranges, to satisfy 65 to 85 per cent of the customers that come in his store, rather than taking any one given line and spreading it across the board with single size depths or single shoes in sizes in any one par-

ticular style.

Overlapping lines would not help the situation. In the shoe business you do a certain amount of retail volume at a certain markup. In turn, you plan on the amount of cost of sales; the amount of turnover you would like to achieve. This limits the dollars you spend. By overlapping brands you are cutting down your ability to put your money where it returns your investment. By carrying the depth of sizes you are able to satisfy the majority of the customers coming into the store. You may not be able to show them quite as many styles, however, you are more able to fit them. Say you have 3 in B's, 2 in AA's, going to any one particular shoe. If you sell any one shoe you are not out of business, you have a back-up shoe. You have shoes that you aren't about to miss a sale with. You are able to service most of your customers.

A good merchant will order fill-in sizes every week. Depending upon his location from St. Louis or Trenton, Tennessee, he should have them in the next week. They are shipped by express.

Line concentration bears on the inventory situation of the dealer. By concentrating within a line, or on fewer

lines, they can accomplish a maximum of volume at retail on a minimum of inventory, thereby turning shoes into cash rather than shoes on the shelf. In other words, the [fol. 371] same amount of business with a small inventory is exactly what it means. The dealer has less capital tied up and has fewer mark-downs at the end of the season, and is able to do a greater volume of business because on this basis he is open to buying new and changing current pat. terns. When you are open to buy you have available capital. You are not in the position where if you buy too many lines of shoes in any one price range, or you are heavy on merchandise, you have to do one of two things. You either have to mark the shoes down to get cash to buy new shoes. or you overbuy and go ahead and buy new patterns any. way. Consequently, you double your inventory and not your sales.

The witness would say that the majority of the dealers in his territory practice line concentration. That's why they like the program, because they make money. He is talking about the 51 dealers in his territory. To his knowledge, he has no dealers in this territory that do not prac-

tice line concentration.

He has never told a dealer on the Brown franchise program in his territory that he could not carry a particular line of shoes. The decision as to what line of shoes the dealer carries is a matter for the dealer. The witness said, it is his business. He makes his living out of this. This is his decision to make.

In his work as a fieldman, the witness has particular knowledge as to the various lines of shoes carried under the Brown brand and sold by Brown Shoe Company. That information, basically by pattern number, is sent out to him. He gets all correspondence to all sales divisions of Brown. He is familiar with the top number of sellers in each line by number. He also picks up a great amount of information from the dealers that he works with, due to the fact that they are concentrating on the lines he is familiar with, and he can pass along information to the various other dealers in the immediate areas which may be of some help. That relates to the performance of the various styles or types of shoes.

The witness is definitely more familiar with the Brown

brand of shoes than with the other merchandise because [fol. 372] that is basically the merchandise he works with. He would say that he is in a better position to advise a dealer in regard to the shoes with which he is familiar. He uses this type of information in counselling and advising with the franchise stores. He is not in the same position to give the same type of counsel and advice with regard to brands of the other manufacturers. He is unfamiliar with them. As to whether this has any effect on his ability to counsel with the dealer on his overall operations of his store, the witness said, I would be able to give a dealer much more help in counselling and guidance in lines with which I am familiar than the other lines that he is carrying in the store because the only thing I would have to work with would be his pairage guide on the back of his monthly report and buying guide. I have no idea of the style pattern or service policies or what have you of other lines than those I work with. With the Brown brand shoes, he would hope he has complete knowledge on that,

ROBERT G. STOLZ, called as a witness for the respondent, testified as follows:

Direct examination.

His residence is St. Louis County, Missouri. He is employed by the Brown Shoe Company, and is Vice President in charge of advertising and publicity. The advertising that Brown Shoe Company does on a national advertising basis is under his direction and supervision. Their national advertising program is designed to help build brand acceptance and brand recognition of their men's, women's, and children's shoes and to help pre-sell the consumer on the value of these brands. Preselling is one of the most important functions of national advertising.

The media they use in connection with national advertising varies. Brown has used television, radio, newspaper, magazine advertising; but over the years they have concentrated the majority of their effort in national magazines or so-called print media. Their national advertising is now [fol. 373] mostly concentrated in that area. They feel that

national magazines do an excellent job of matching the population of the country. In other words, the percentage of the population of New York City is usually matched by the same percentage of circulation of a given national magazine in that area. So it allows Brown total national coverage of their brands and of the population. Secondly, it also provides a very good visual presentation or graphic presentation of their advertising story and their merchandise. This is also a part of preselling the brand.

This type of advertising is one of the reasons why retailers seem to prefer branded merchandise, not only in Brown's footwear but in almost any category of merchandise. It creates a customer awareness or a customer desire. Other shoe manufacturers engage in the same or similar type of national advertising. He would say the great majority of shoe advertisers and manufacturers are using some form of national advertising. It is definitely

a practice in the shoe manufacturing business.

The success of national advertising is not a direct benefit from how much money you spend on it. This is particularly true in the shoe business. I e development of a brand of shoes can occur for many reasons not related to the volume of advertising dollar placed behind it. There are many examples where style alone can create a considerable demand for the product. One recent example are Hush Puppies, which started and were created only a few years ago. It is a brand of men's shoes which were created in a casual style with a new type of leather, with a waterproof feature, and it seemed to take the country by storm. They started out with practically no advertising and were able to get far superior distribution of their product than Brown has been able to obtain on their men's products after being in the business for 82 years.

Respondent's Exhibit 3 was marked for identification. This is a copy of a national ad which appeared in "This Week" magazine and also in "Parade" magazine, both of which are Sunday supplements distributed through Sunday newspapers in 110 of the major cities of the [fol. 374] country with a circulation of about 22 million. It

is an ad for Hush Puppies.

In other examples of not well known brands that have

not been dependent upon advertising, Stride Rite, a brand of children's shoes, which is neck and neck for leadership as the largest brand of children's footwear today, has done relatively little advertising over the years. And they have built their business almost entirely—in addition to a good product—upon a service factor, where they have been able to prove to their customers that they can deliver their footwear on time and to the extent which is ordered by the retailer. That's the other extreme, with no advertising. Respondent's Exhibit 3 was received in evidence over objection as to lack of materiality and relevancy.

The witness has something to do with the design or establishing the general policy as to the format of the ads that Brown uses in its national advertising. As to their objectives in setting up the ads of Brown, he said advertising, as they see it and use it, has principally a sales message in print, consisting of an illustration of the merchandise, a description of the merchandise, which would include benefits and selling points to the consumer, the brand name of the merchandise, and the price of the merchandise. They are desirous of making this advertising the most effective and the most efficient possible advertising to the consumer and also helping to presell their product for the retailer to the consumer.

[fols. 375-378] The witness has reviewed items that have been in recent publications involving the soft goods field, and shoes particularly. He has prepared exhibits based on this strdy that he had made recently. A looseleaf book and pages therein were marked Respondent's Exhibits 4-A through 4-Z-3 for identification. The witness was shown the exhibit. It has been prepared by him or under his direction from the various national publications. Respondent's Exhibits 4-A through 4-Z-3 were received in evidence. The various advertisements in Respondent's Exhibit 4 were taken from national magazines widely used by the shoe industry in national advertising. In his opinion these ads are typical of the national shoe advertising of various manufacturers.

[fol. 379] Edward Bomar, called as a witness for the Respondent, testified as follows:

Direct examination.

He resides at Jackson, Mississippi. He is a sales manager of the Risque Division, Brown Shoe Company, and has been since February 6, 1961. He has previously been in the shoe business.

The witness is still Vice President of Bomar's, Inc., but is no longer active in the management of Bomar's. His period of active management was from 1945 until the latter part of 1955. There are 4 units of Bomar's, 3 in Jackson, one in Laurel, Mississippi. They are all part of the same ownership, the same corporation. His actual duties were merchandising or setting up buying plans twice a year for the stores. The day-to-day operation of the stores was left to local management, the man in each store. The stores were under the Brown Franchise program while he was a manager. They were started out on the Brown franchise plan August or October of 1947. They are still on the Brown franchise program.

The term "line concentration" is a familiar term in the merchandising business. Line concentration to the witness means to reduce as much as possible unnecessary duplications of patterns, styles. It is very important. The complexity of sizes in the shoe business is a difficult thing to stay on top of, in the sense that there is a broad selection of widths and sizes, and any multiplicity of patterns or brands only adds to the problems of inventory control and trying to develop adequate turnover to produce a net profit. He said, it's almost a maxim in the shoe business that a greater degree of concentration produces a greater degree of profits. They felt that they followed a line concentration policy in the Bomar stores at Jackson and Laurel.

The Bomar Stores at one time bought a shoe called a Deb shoe, or a brand of the Deb Shoe Company. Debs were a new line in the late '40's, launched at the time of another dress shoe line by the name of Troylings. It must have been in 1948, the spring or fall of '48. They bought both [fols. 380-381] of the lines just mentioned at the same time.

They continued Deb shoes until about 1953, which was probably the last season they had them in the stores.

The Bomar stores started in business on the Brown franchise program, and they were on the Brown franchise program when they first bought the Deb shoes. Bomar's were incorporated in 1947. They carried the Deb shoes until about 1953, when they stopped because of problems. Deb shoes had a concept of making shoes at that time which was new in the soft light weight field and it became quite an important factor as far as the consumer was concerned. Bomar's went into them and did real well with the shoes for a couple of years. Deb Shoe Company got later and later with delivery dates. The quality and workmanship began to deteriorate and finally they couldn't get along with the Deb people at all and had to drop them. Deb shoes were not dropped because the Bomar stores were on the Brown Franchise program.

The Deb shoes were replaced with the old Johnny Flautt Shoe Company, it was known as that at that time, that made flats and casual type shoes. That firm lasted about 3 years and was reorganized into a firm called the Dori Shoe Company, which is presently in existence. He guesses that you could call the Deb line of shoes high-fashioned. It was a look or a feel in the sense that that was the beginning of an evolution in the shoe business of what they call unlined weight leathers. Other shoe companies followed that style or pattern after the Deb Shoe Company came out with theirs. It started out with what you would call a fashion fad, then became a trend and an established

category in footwear. Everybody makes it.

[fol. 382] Cross-examination.

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The distinctive feature of the Deb brand shoes, which caused Bomar's to buy it back in 1948, was a construction in the shoe business called slip-lasted construction. Wedges, mostly open types. This became a real football during World War II because it was a nonrationing, nonticket item, made in canvas and plastics. You could get them without a stamp. And this put the kiss of death on that construction. Women just got tired of it. So the evolution of

flats and casuals ala the Deb look resulted. Bomar's put them in and did real well with the shoes and this became not just a fad or a gimmick but a basic part of the shoe business. And they would have continued with Debs but they couldn't get service from them and it was not the quality of footwear that they had been used to selling in the store.

The distinctive feature was the unlined weight leather. After 1948, other shoe companies brought out lines with this unlined weight leather. Everyone got into the act because it was a general thing all over the country, this trend of footwear. Many new companies sprang up, making these kinds of shoes. They felt Deb had the best selling and at that time the best for the needs of their stores. The term "weight" refers directly to the thickness of the leather. It is a much softer tannage too. The pointed toes in Deb shoes had nothing to do with the term unlined weight leather. That would depend on the last it was made on. That was not a distinctive feature of Debs. The pointedtoe look first started about 5 years ago, and that progressively has become basic in the business, and all pumps today are built on some variation of the pointed toe theme. [fol. 383] As to when Brown Shoe Company started on this type of shoe, the unlined weight leather, the witness said, they must have done it at the same time because Brown had lines making these kinds of shoes at the time that Deb was making them: Westport, Glamour Debs. He did not think Life Stride had them. They were a bit different field.

The Bomar chain at Jackson was a group of chain stores when the unlined weight leather came on the market. They opened the first shoe store downtown in late 1947 or the beginning of 1948. Then they opened a second branch store in 1951, and the third branch in 1955, and then they picked up the Laurel unit in 1958. Three stores are in Jackson and one is in Laurel. Laurel is not a suburb of Jackson, it is 90 miles to the southeast.

Brown Shoe Company was making the same kind of shoes that Deb was when Bomar's decided to buy Deb. As to why they decided to put in Deb shoes rather than

an equivalent line, the witness said, we felt they were a little bit better style and more suitable for our purposes. Retter made at that time. We didn't think there was enough fashion in the Brown Shoe Company's interpretation of this. We felt their use of leathers and materials was more suitable for the story that we were trying to sell in our stores. Brown had an equivalent type of shoe, disregarding styles, in the same price category. As a matter of fact, they were in the same price field because those shoes at that time were retailed at \$6.99, \$7.99, \$8.99: and today they would be \$10.99 and \$11.99. The Troylings lines of shoes, which Bomar's put in at the same time as the Deb shoes, were in a price category of \$12.99 to \$14.99. They were of a different character of shoes than those others under discussion. They were women's dress shoes. fashion shoes, mostly high heeled, much dressier. Bomar's put on a full line of Troylings shoes in that category. They felt that with the addition of Troylings and Deb shoes that this would give them a better assortment than anything else they could buy.

One of their problems with Debs was a difference of opinion on who stood the brunt of the responsibility of [fols. 384-388] deliveries. The witness said, I recall an incident toward the end of our relationship where he was 60 days late with it and insisted on shipping us the shoes, even though by that time Easter season was over. And we had a hassel going back and forth. And finally I told the boys, "Well, find yourself a replacement for these shoes because we can't make any money on the shoes if we have to take them 60 days late." Now, I don't say that that is the only reason we dropped Deb. The shoes had become poor-fitting shoes. They had so much work that it was coming out of their ears, and they couldn't deliver shoes on time, and they were ramming them through the factory, and they were coming out very shoddy. These were all contributing reasons as to why they dropped Deh shoes.

HUBERT C. ROGERS, called as witness for the Respondent. testified as follows:

Direct examination.

He resides at Ennis, Texas. He is in the retail shoe business, and has been for 40 years. He presently owns 4 stores, 2 of which are in Ennis. He has a self-serving shoe store, shelf store, and then a regular family shoe store in Ennis. The self-serving store is called Economy. but the others are Rogers Shoe Stores. He has one in [fol. 390] Huntsville, and one in Crockett. His sons are associated in those stores. The stores in Huntsville and Crockett are also known as Rogers Shoe Stores.

The 3 stores with the name Rogers Shoe Stores are on the Brown Franchise Program. The Ennis store went on the program about 1934, the Huntsville store went on in 1949, and the Crockett store, was just opened about the first of March. They closed a store they had at Temple the first of January. They had a store, called Rogers Shoe Store, at Temple for 8 years. That store was on the Program, too. They liquidated and moved it to Crockett.

Rogers' Shoe Stores which he presently operates carry about the same lines of shoes. There may be one line in one store that he doesn't carry in the other two. In Ennis, the Brown lines he carries are: Roblee and Pedwins in men's shoes, Naturalizers, Life Stride and Robin Hood in women's, and Busters and Robin Hoods in children's. Robinettes is the way they carry those women's shoes. Then he carries Hood Rubber Company and Autry Rubber Company, for canvas footwear and storm wear. He also carries Daniel Green houseshoes and Acme boots, Viner's loafers, Viner's Shoe Company out of Bangor, Maine, and Red Wing work shoes. He carries Wohl women's novelties and women's flats. He buys some Graham-Brown women's and children's shoes in the cheaper lines.

The lines that he has referred to are in the Rogers Shoe Stores in Ennis. He carries approximately the same lines in the Huntsville store. The same is true of the Crockett store. He has carried these lines for a number of years. There are some lines which he previously had but does not have now. He has bought lots of different lines through the years. At one time he carried some Deb shoes, both for the Huntsville and Ennis stores. That was 4 or 5 years ago. He discontinued buying Deb shoes because he just didn't feel like he needed the line. As to whether anyone from Brown Shoe Company told him that he had to discontinue those shoes, he said, no, they never did tell me that.

[fol. 391] No one from Brown ever told him that had to carry U. S. Rubber footwear. He used to carry U. S. Rubber a good many years ago and during the war they kind of "weaned" him, and he has done without U. S. Rubber ever since. He doesn't carry very many Hoods now, but does carry a few. Autry is his main supplier of canvas and rubber footwear. Autry Rubber Company is in Dallas. They are not manufacturers, they are jobbers.

The witness said he had to have a definite policy in merchandising shoes. The policy is difficult to describe. He just buys them and sells them at whatever the market will bring and what it will stand. And he tries to buy the shoes he needs and when the stock get below a certain point, then he is open to buy more merchandise. When it is beyond a certain point, he tries to merchandise the shoes he has.

[fol. 392] As to whether he had ever signed a written franchise agreement with Brown, in regard to any of the stores, he said, when I went on the Brown franchise plan back in the dark ages of the depression, they gave me a line of credit that was probably more than I was justified in getting, and I agreed at that time, I signed the agreement, but I could not tell you one paragraph in that agreement, and as far as I know, that was filed and that was the end of it. If it's ever been brought out and reviewed, it's been by them. I might have had a copy of it, but I don't remember, what I signed. At [fol. 393] no time has the witness ever had occasion to refer to the agreement. No representative of Brown Shoe Company ever called his attention to any provision in it. Nobody from Brown has ever told him that he must carry

certain Brown lines of shoes, and nobody from Brown has ever told him that he could not carry any outside brand lines.

The witness has heard the term "line concentration" in the retail shoe business. It means that instead of get. ting the sweet stuff out of every line of shoes, you inst buy one line of shoes and stay with them. As to whether he conducts his business on that basis, he said, yes, sir, I sure do. I just don't have any odds and ends. I don't have any duplications of styles and sizes. What is good in one line of shoes is good in the other line of shoes. every line of shoes that I see has, they have lines, styles that are very familiar. If I buy one line of shoes, then I turn around and buy another line. I buy similar styles because the styles that are good in one line are good in another. He attempts to avoid conflicting lines so that he can operate on less money. He can merchandise his store better. He can have more profit in the end in money and not in shoes.

The witness is acquainted with the Clinic line. He never carried it because he did not feel that he needed them.

His stores are family shoe stores.

He has never carried a Freeman shoe. A Freeman salesman has called on him lots of times. He did not buy the shoe because he didn't feel like he needed that line of shoes. His reasons for not buying Freeman shoes has nothing to do with being on the Brown franchise program.

The witness had purchased Weyenberg shoes way prior to the time he went on the Brown franchise; prior to 1934. A Weyenberg salesman lives in his town and he has an account there. He has never offered to sell the witness any shoes. He is referring to the Ennis, which is between 8000 and 9000 in population. The account he mentioned with Weyenberg is a men's shoe store.

He has never carried any shoes manufactured by Huth-James. He does not recall that a salesman of Huth-James ever called on him. He has never carried any shoes manufol. [6] factured by the Leverenz Shoe Company. No salesman for Leverenz has ever called on him. He is not

familiar with it.

In regard to the franchise program, and his understanding of how long he has to be on the program or whether he can leave it, he said, I didn't know there was any time limit. I am not familiar with the requirements of a new store. When we opened this store at Crockett, I just went up there and bought the shoes. I didn't know of any requirements. I didn't sign any kind of agreement in Huntsville that I recall.

Cross-examination.

The witness has been with Brown shoes since 1934. Brown extended him a line of credit in 1934.

He said, at that time they extended me a 60-day line of credit. Brown Shoe Company has never loaned me any money. They sold me some shoes and gave me a 60-day line of credit. Since that time, credit terms have been changed from time to time, 30 days, 5 percent off, and 30 days, two off. They will sell me some shoes, sometimes, and they will ship them ahead of time, shoes I will buy for March 1st, they may ship them in January, February. I have enjoyed a very good credit rating with Brown Shoe Company from the first day I opened my store. Now, when I opened the Huntsville store, they might have given me an extra 30 days in order to open the store. When I opened the Crockett store, they extended me an extra 30 days to get opened up and get ready to do business. You have to have your shoes a little ahead of time before you go to selling them. That is the only way they have ever extended me any special credit, any more than they give to anybody else.

The witness enjoys a very good relationship with Brown Shoe. He has never sent in an order that was held up on account of his credit.

He is familiar with the architectural services that Brown has available, and he has used those services. The first use was for the building of the shelving in his present store. They gave him blueprints to build the shelves. Then they gave him some drawings of the arrangement of his [fol. 395] store when he opened in Huntsville. They also gave him complete drawings for a new front in the Huntsville store. When he opened the Crockett store he went on his own. He just opened the store down in a small country town of some 6,000 people and he didn't want it dressed up too much, so he didn't ask for their architects to give

him a drawing for that store. He will want to put a new front in that building one of these days, and he expects them to give him a drawing for that.

Brown has never helped him finance putting on a new

front, or another store.

The witness has his sons with him now. His oldest son has been in the Huntsville store since it opened, and his youngest son was in the Temple store and is now in the Crockett store. After 40 years in the business, he is still selling shoes every day, but he said he is not even very good Saturday help now, and they'd just as soon he'd stay out of the front. He has a manager in the Ennis store, then his oldest son manages the Huntsville store and his youngest son manages the Crockett store. In Ennis, at the self-service store, a lady looks after it. He rarely goes there except after hours. He is not supposed to own the store. As to how long he had held the status of semi-retired or retired executive, the witness said, that is a debatable question. He doesn't think he is retired at all. He is in the store almost every day.

The witness carries some Graham-Brown shoes. They are cheap flats and loafers. Graham-Brown are jobbers in Dallas. Those shoe retail from \$1.99 to \$3.99, and some few men's shoes get up as high as \$6.99. He carries some Viner loafers which are made in Bangor, Maine, in all 3 stores. They are a \$6.99 loafer. They are competitive, but he likes the Viner loafer better than the others.

The Crockett store went on the Brown franchise on the day it opened, March 1, 1961, and the Temple store has operated as a Brown franchise from the time he bought it. It was already a Brown operation. That was in 1950 or

maybe 1952 or 1953. He didn't really know.

The witness was asked by the Hearing Examiner if he gave up some lines that he was carrying when he went [fol. 396] on the Brown plan at his Ennis store in 1934. He said, that was from a "standing start." He had been in business there and had been an officer and director in a company that got into financial trouble and went into the hands of receivers. Meanwhile, he was still working for them. Then he resigned and went into business on the Brown plan. He had not been in the shoe business for himself, in his own name. In 1919 he was vice president

and manager of the Thomas Shoe Company for a period from 1919 to 1924 or '25, somewhere along there, and then was an officer and director in Jolesch Shoe Company. They had a chain of stores and he was assistant manager of those stores. They got into financial trouble in 1929, '30 and '31, and when it folded, he went into the same building that he was in all the time. That was in 1934.

ALVIE RAY COLEMAN, called as a witness for the Respondent, testified as follows:

Direct examination.

He resides in Vernon, Texas. He has a shoe business, Coleman Shoes. It was a partnership established in 1947. He bought the store himself 5 years ago this month. The store is on the Brown franchise program. It has been a Brown franchise store since 1947. The witness has been in the business 20 to 25 years, closer to 20. He is the owner of the store at this time, and actually works in the store.

His store carries, in the Brown line: Air Steps and Life-Strides in ladies, Roblee and Pedwin in men's and Buster Browns and Robin Hoods in children's. He also carries Daniel Green house shoes, U. S. Keds, Haggardy shoes, because it is an arch type shoe, out of Washington Courthouse, Ohio. He carries very few shoes from Endicott-Johnson, and a few shoes from Pfeiffer, Wayne Shoe Company, Williams Shoe Company, and Acme Boot Company. There might be a few others, but that basically is the major lines. U. S. Rubber Company is his major canvas and rubber footwear supplier. He buys some from Autry Rubber Company out of Dallas.

[fol. 397] The only way he gets a price deal from U. S. Rubber Company is by buying volume, whether through

Brown or buying direct, he can buy either way.

The only way you can get a discount is on the volume you buy, whether you buy 500 pair or 100 pair. That is from the house, that is not through Brown Shoe Company. That is by buying just in volume, they call it volume

discount. It is his understanding that he could obtain shoes from U. S. Rubber Company at the same price whether he was a Brown franchise dealer or not. As a matter of fact, he bought from them for years like that until they could be invoiced through Brown. Some old boy came by and mentioned on a volume deal he could get a deal. Of course, they could be billed through Brown Shoe Company, it was never mentioned to him through Brown Shoe Company that they could be bought that way.

He has carried U. S. Rubber shoes practically all the time since he opened in 1947, but not on as big a scale as he buys them now. It's a volume deal. He gets 3 or 5 percent discount, depending on how many he buys, on original buy shipped from the factory out of Naugatuck.

Connecticut.

He has never obtained a loan from Brown Shoe Company. In determining the lines of shoes he carries, the only policy he has is to buy what he can sell, what he can turn, when the customer wants at the immediate time, and sometimes that falls in the category that Brown doesn't have it, he buys from some other company. Specialty shoes or anything that he can get that he needs and he doesn't buy them from Brown because they just don't have it. Brown never requires of him that he buy shoes from Brown. It never has, in connection with the Brown franchise program or otherwise, told him that he must carry Brown lines. In connection with the Brown franchise program, no one from Brown has ever told him that he could not carry an outside or conflicting line of shoes. No one from Brown has ever told that he must get rid of an outside or conflicting line of shoes.

[fol. 398] He does not have a Brown written franchise

agreement.

The term "line concentration," in relation to shoe retailing, means to the witness that the less lines you buy the less odds and ends you have at the end of the season to clear out. He said, his mind is not good enough to buy from a dozen lines and pick out all the good shoes in the lines. He buys a ladies' line of shoes, he figures the type shoe. If you buy from a half a dozen lines, you are going to have conflicts at the end of the season. That is the only way it means anything to him. The witness would

say that he does concentrate. This affects his profits. He said it leaves you with less odds and ends at the end of the season. You know where you are, and you don't buy conflicting lines. The effect it has is it ups your profits at the end of the year because you have less odds and ends. That is where you wash out at the end of the season, that is where you lose your money.

[fol. 399] He has never been called on by a salesman from the Juvenile Shoe Company. He tried to buy Clinic at one time and it worked out that they had an account in Vernon. He thought they were going to drop it; he would have liked to have had the line because of the brand prestige of the nurse's shoe, but they stuck with the line where they were. That account was Jimmie's Shoe Box in Vernon. He believes they also carry Lazy Bones, which are made by Juvenile Shoe Company.

The city of Vernon has a population of 12,000 to 13,000. If a brand is already carried by another dealer this does have an effect on his decisions, because you can't get it. They will open one account, that is about all. Assuming he could get the line but another store would have it, if he needed the line, if it wasn't a conflicting line and if he had the money, he might consider it.

The witness has never been called on by a salesman from Freeman Shoe Company. They have distribution in Vernon, Clayton's Men's Store. One season, five, six, seven years ago, he bought 120 pairs of Weyenberg shoes. He now buys some mail orders, some specials, occasionally from the Weyenberg Shoe Company. The reason he dis-[fol. 400] continued the Weyenberg line was because the shoe in their territory has no prestige whatever, has no particular meaning as far as the name brand, and he just didn't need the shoe. It was just an extra shoe that he didn't need in there. He believes that they are carried in town today at the leased department in Russell's Department Store.

The witness has been called on by a salesman from the Deb Shoe Company. He never bought Deb shoes because he just doesn't need them, and can't afford them. It is in conflict with style and price categories. It would be the same thing if you were buying Deb and the Life Stride salesman called on you. You'd be right in the same category, you are buying the same thing, more or less, twice. No one from Brown Shoe has ever told him that he could not buy Deb Shoes.

He does not know of the Huth-James Company or what they make. He has never been called on by a salesman

from the Leverenz Shoe Company.

Cross-examination.

The retail prices of the Daniel Green house shoes are from \$5 to \$9, that is, men's and women's. The Daniel Green line has a let of different patterns of house shoes. The witness does not carry the full range of patterns. He has basic styles, he can't afford to carry all of them. In the men's and women's he carries from 10 to 15 styles. They probably have a hundred styles. The witness does not carry all of the patterns of the Haggardy arch type shoes. He buys 6 shoes from them, they have 6 good basic shoes. They are mail order shoes. He can get one pair or a hundred pair, or there is no limit to how many pair you can buy at one time. He buys a \$4.99 camp moccasin shoe from Endicott-Johnson that he cannot identify as far as brand.

From Pfeiffer, the witness buys a house shoe and little, even toe sandals and little tintable and dyable shoes for parties and weddings and things like that. They sell for about \$3.99. He buys a similar type shoe from Wayne, in high heels. Similar to Pfeiffer's, but in higher heels. Pfeiffer's are mostly flats and low heels for teenagers and [fol. 401] children. They sell at a comparable price. Wayne's will sell up to \$6.99. He sold approximately 200 pairs of those shoes last year.

The shoes from Williams are barefoot sandals, \$2.99, \$3.99, \$4.99 and sandals and flats, cheap shoes, table shoes.

A very important line the witness forgot to mention is Red Wing work shoes which he buys. Brown has work shoes but they don't have a good complete line of work shoes. He carries the U. S. Rubber type of weather-proof wear since he opened the store. In his part of the country they don't get a lot of rain, so they don't need a lot of rubber protection footwear. What he buys principally is tennis shoes for children. He has been carrying them since shortly after he opened up in 1947—after the first year.

[fol. 402] Charles Sherman, called as a witness for the Respondent, testified as follows:

Direct examination.

The witness resides in Idabel, Oklahoma. He is in the retail shoe business. He owns several stores: Sherman's [fol. 403] in Idabel, Preston Forest Village in Dallas, and he is part owner of a store at Midwest City, Oklahoma. Those are just shoe stores. He has a department store also at Idabel. His shoe stores are connected with the Brown franchise program. The Idabel store came on in 1952 or 1953. The Dallas store came on 1959, at its inception. The Midwest City Store was put on the franchise when he bought the store last February.

The witness has been in shoe retailing since 1949. He works in the store in Idabel and runs it, and in the other stores they have managers. In the Dallas store the manager sends the reports to him and he makes out the reports and sends the checks every Monday or Tuesday that are to pay off the bills and so forth. His partner who lives in Midwest City takes care of that. They have a manager

for the Midwest City store.

In Idabel they carry Naturalizers, Life Strides, Robin Hood, Buster Brown, Pedwin. They also carry Crosby Square, Florsheim, Jolene, Daniel Green house shoes, and Ball Band rubber products from Mishawaka Rubber Com-

pany.

In Dallas they carry Life Strides, Buster Brown, Robin Hood, and Pedwins, which are Brown lines; and they also carry Florsheim, some Crosby Squares, some Penobscot and a few Tober-Saifer, Mishawaka Rubber Goods and Daniel Green house shoes.

No one from Brown Shoe Company that he remembers

ever attempted to tell the witness that he should buy his canvas and rubber footwear from U. S. Rubber Company. He doesn't at any rate.

Q. You have a written franchise agreement in connec-

tion with any of your franchies stores?

A. I think I do have, I never have followed it very closely. I haven't paid any attention to it, but when I put in the Dallas store, I think I did sign one for the field man.

Q. Do you recall whether you had a franchise agree-

ment in connection with your store in Idabel?

A. Whether I signed one?

[fol. 404] Q. Yes, sir.

A. I don't recall. I never have observed it if I have, I don't remember, to be truthful. That happened '49—now, I have slept since then, I don't remember that.

Q. Have you ever had an occasion, then, to refer to any written franchise agreements in connection with either of

those stores?

A. No, I have not.

Q. Has anyone from Brown Shoe Company ever had occasion to refer you to any provisions of any written contracts in connection with those franchise stores?

A. No, huh-uh, no-o-o.

No one from Brown Shoe Company has ever told him that he could not carry an outside or conflicting line of shoes. As to whether anyone from Brown ever asked him to stop carrying an outside or conflicting line of shoes, he said, no—maybe their salesman might have come out just trying to sell me their shoes, but anybody with authority from Brown has never told me what to carry.

A salesman would try and sell the witness his own line, but he didn't ever, in connection with that, make any attempt to tell him that he could not stay on the Brown franchise program and carry any outside or conflicting lines of shoes he was carrying. If he had, the witness

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wouldn't be on the Brown plan.

The witness' policy as to determining what lines of shoes he carries is based on which is the best shoe for him, which means that if he thinks he can make more profit on a certain shoe, regardless of whether Brown makes it or somebody else, if he feels it is the best shoe

for him, for a net profit viewpoint, he will buy the shoe. The term "line concentration" means something to the witness. He said, he tries to buy what is best for him. When he has a certain line of shoes, he tries to buy the shoes so next year he can continue to advertise that line. It will mean something in the community.

He does not purchase the group life insurance offered by Brown franchise program. He purchases the group business insurance available for Brown franchise dealers [fol. 405] for the store at Dallas, not in Idabel. That is a small town-customers he has to stick along with them.

The witness had a franchise store at Benton, Arkansas from about 1952 or 1953 until about 1958, when they sold that store. They took the money from that and went into the Dallas store. There was a hospital in Benton, and there was some demand for Clinic oxfords, so he bought Clinics for that store. He started buying them about 1953 or '54 and as far as he knows, the owner of the store there is still buying them. The witness needed some shoes like that in Idabel, he wasn't big enough to handle as many shoes as they required buying. So the witness just sends off to his manager who bought the store, tells him what he wants in certain shoes, and the manager gets the shoes for him from the Juvenile Company. Juvenile would not sell to him directly in Idabel. The salesman would sell to him if he would buy a certain amount of shoes. The town wasn't large enough for the witness to buy that many Clinic oxfords there, so he couldn't buy them. He does not recall the amount of shoes required to be bought but he knew he couldn't handle them in Idabel, the town was too small. He was a Brown franchise store in Benton at the time he carried Clinics. No one from Brown attempted to tell him that he could not carry Clinics while on the Brown program. Juvenile does not have any distribution in Idabel at this time.

[fol. 406] The witness has purchased shoes from Deb Shoe Company. Several years ago, when Deb came out with the little fancy heel out and round toe, he bought some shoes from them for the Idabel store. They were real hot shoes. He does not remember whether the Idabel

store was on the franchise program at that time. He quit buying Deb shoes because he didn't need them. He couldn't fit them. The shoes got to where they wouldn't sell. No one from Brown ever told him he could not buy shoes from Deb Shoe Company in connection with the program. If they still sold, the witness would still be carrying the Deb shoes.

At one time in Idabel he bought a few Freeman shoes, but he doesn't know if he was a franchise store then or not. It was early and he does not recall. He quit buying Freemans and took Crosby Squares to replace them. That is the shoe he carries now.

The witness does not believe he has ever had occasion to buy Weyenberg men's shoes. They did not have the acceptance that he needed. He had Crosby, just didn't need the shoes. He likes Crosby, that's why he shifted to them.

He does not believe he ever bought any shoes from the Huth-James Company or from Leverenz. He does not believe he has ever heard of them.

Cross-examination.

The witness stated he purchases Florsheim men's shoes which run from \$20 up in price. He usually buys them in Idabel about \$20 to \$24. He uses some little better shoes here in Dallas, some little higher price shoes. Crosby Square men's shoes run from about \$15 up to \$18. They have some less than that, but he usually sticks to the \$15 to \$18. That is retail price, what they sell for. He buys mostly flats from Jolene. He buys them because he can buy practically the same shoe as Brown for a little less money. They retail the same price—he is making a little more net profit. He carries Crosby Squares because he likes the shoe and does well with it.

[fol. 407] Brown didn't help him too much in establishing the store in Idabel because he already had the store. He converted the dry goods store into a shoe store. He was running that when he first went on Brown. He first went on Brown when he opened the Benton store. He used some of their store planning and also their accounting system. He liked their field men's services. The field

men know more about what goes on, like if you're sitting in Idabel, then you don't know what selection is good in Dallas and they helped him out like that.

Brown has extended credit to the witness. He has a loan with them now, when they bought the store in Midwest City, because his partner could only raise so much money. He could have raised the rest. They borrowed it from Brown. At any time he could pay the money off if they want the money. It would be better for his partner to have the store paid out. He didn't have any difficulty getting the loan from Brown. That was in this last store in February.

Salesmen from different divisions of Brown Shoe Company usually come about three times a year. The Buster Brown man usually comes in about three to four times a year. They do not spend quite a bit of time with him when they come in. The fieldman visits him about trice a year. Usually nothing much takes place. He visits about two or three hours and is gone. If the witness has any problem they sit down and discuss them. Here in Dallas it's a different story. The witness is not here and he understands the man comes down and is looking out for the witness' interest. He may help with a buying guide, or make suggestions to the manager about the windows or interior of the store, things like that, just to help them out. The same thing happens when he visits the witness. He makes suggestions, ways that may help business, interior, windows or things like that, or if the witness has any problems as far as accounting or like that, he will help.

The witness is a very satisfied customer of Brown.

[fol. 408] Redirect examination.

The loan to him is not in any way tied with the purchase of Brown brand shoes. If it was, he would never accept it. He doesn't need the loan, he can pay it off at any time. He wouldn't accept any loan if it had any strings attached. Brown did not make any attempt to attach any strings to that loan.

The witness assumes he can leave the franchise program any time he desires. That is the understanding he has. No one from Brown ever told him differently.

Examination.

By Hearing Examiner Creel:

Q. Before you became a Brown franchise store, before your first one did, I take it you talked with somebody from Brown about it, did you?

A. Yes, Mr. Copeland, who is a salesman, very good

friend of mine, he informed me about it.

Q. Well, what do you understand your obligation would be toward Brown if you became a Brown franchise store?

A. Well, I assumed that they would—I don't know what obligation, what prompted me was two things: I was wanting to use their accounting system, which would help me, knowing where I stood from month to month, and two: I was wanting to use their fieldmen. If I wanted to branch out, I was wanting to use their fieldman in helping me secure the location and also help me when I had the location. I wanted to check—had a manager—check that store and inventorywise, I'd like to use their fieldmen in doing that. That was the two things which prompted it.

Q. Yes. Now what, if anything, did the Brown man tell

you would be expected of you?

A. Well, he told me that I should use as many shoes of theirs as possible. But I told him I would use their shoes so long as their shoes made me money, their lines—well, that is what I would use, and if I found somebody else's line that would make me money, I would buy it. That [fol. 409] was the understanding before I went on because I would, well, there was no strings attached—I wouldn't go into a deal where I was tied hand and foot and had to do certain things because I just don't believe in that.

Q. Well, did you expect that you were to give Brown preference though, or just what was it he said you were

expected to do for Brown?

A. Well, he didn't say much of anything on that line. He talked to me over on the other side, what it would do for me, how it would help me.

Q. Did you read the contract you signed?

A. Not too much.

Q. Well, did you read it, I mean did you read all of it?
A. I glanced through it. As long as I could leave when

I wanted to, I didn't see where it was too much-where it was too much pertinent, if I didn't want, I could always get out.

Hearing Examiner Creel: All right, sir.

RAYMOND CARL ADAMS, JR., called as a witness for the Respondent, testified as follows:

Direct examination.

The witness resides in Killeen, Texas. He has a family shoe store, Adams Shoe Store, on the Brown franchise program. His store has been on the program since 1950.

He had the store prior to 1950.

The shoe lines he presently carries, Brown and other lines, are: Buster Brown, Robin Hood, Air Step, Roblee, Pedwin, Old Main Trotters, British Walkers, Clinics, U. S. Keds, Acme Boots, Red Wing, Daniel Greens, Night Aires, Best Custom Craft. He carries Life Stride, Hush Puppies, Edwin Clapp, and Capezio, and Viner's flat and casual type shoes also.

He does not believe he signed any written agreement with Brown. They sent him some sort of agreement after he had supposedly gotten on the program. He didn't see a franchise man for a couple of years. The agreement [fol. 410] that he refers to, the way he understood it, was

to confine certain lines to his store.

The lines that he carries today are not those he carried in 1948. He was a little operator then. He had \$215 in the bank and he bought from jobbers and anybody that would sell him. He tried to get Busters, but his credit rating wasn't good enough. That was about 1948 when he first tried to get Busters and he finally succeeded in

getting them in 1949.

The witness buys canvas footwear, Keds and items of that nature directly from U. S. Rubber. He has not checked as to what the price would be, whether he bought it through U. S. Rubber, or invoiced through Brown. He bought from U. S. Rubber before he went on the program and he continues to do so. He has no other source of rubber goods supply.

The term "line concentration" means something to the witness. In the first place it takes less time with buying. He buys too many lines as it is, but when you deal with all these manufacturers and are paying bills and buying from different salesmen, it is quite time-consuming, and he feels that concentration on certain lines is a lot better for a small merchant. He did not adopt the line concentration policy of stocking shoes because he had no experience in the shoe business when he went in, except department storewise. Since he has been in the shoe business, he has not necessarily adopted a policy of line concentration. He buys what he thinks will sell. That is the criteria he follows. No one from Brown Shoe Company has told him that he could not carry lines of shoes that are not Brown shoes.

[fol. 411] The population of Killeen is 23,337. It is near Fort Hood, but that figure does not include the population of the Army post. He has a potential population in his trade area of around 60,000.

The witness does not carry group life insurance under the Brown franchise program. He does not carry the group fire insurance or business insurance risk under the Brown franchise program. He carries that locally. He has used the architectural services at one time. He followed it, not a hundred percent—he made some changes.

He has handled Clinics, from Juvenile Shoe Company, since about 1958. No one from Brown Shoe Company has made any attempt to have him discontinue carrying Clinics. He does not carry Deb shoes. He special orders a few pair a year. No one from Brown has ever told him he cannot carry Deb shoes.

He does not carry Freeman shoes. No salesman from Freeman has ever come into his store to sell him Freeman shoes. The witness has never carried Weyenberg shoes. No salesman from that company has ever called on him to sell their shoes. The Massagic line, a division of Weyenberg, is sold in Killeen, in a men's store. Freeman shoes are shown in Killeen in two or three places, a couple of Army stores and one men's store, a haberdashery. The

witness has never heard of Huth-James Shoe Company or Leverenz Shoe Company.

[fol. 412] Cross-examination.

The witness has three regular employees in his store other than himself. He carries Old Main Trotters. The retail price of these shoes is from \$11.95 to \$12.95, with one handsewn loafer that is \$9.95. He carries their full line, and sold about 200 pair last year. He carries British Walkers also. These are men's shoes, selling from \$24.95 to \$28.95. Red Wing is a work shoe line, carries Wellington engineer boots, jump boots, things of that nature. He carries their full line. He also carries Acme. That is the Wellington boot. Most of it is Western-type.

Night Aire is a ladies' slipper line, and Daniel Green is house shoes. Custom Craft is a ladies' dress shoe, high style, \$20 and up. He carries Edwin Clapp men's shoes, selling for \$24.95 and up. Also, Capezio, theatrical type shoes, ballets, tap, toe, and some flats.

The witness has Lujano, an Italian import, from \$4.95 to \$12.95. It is a woman's shoe. He sold about 400 or 500 pair last year.

Viner is a casual flat, between a teenage flat and old ladies' shoes. It is a middle-age type shoe. It sells for \$6.95 or \$7.95.

His store is a family shoe store. Dividing the shoes in his store into three categories, men's, women's and children's, he carries most of each of those categories in Brown shoes. The witness signed a Brown franchise contract, he went on the plan in 1950. The potential population of the trade area of the town in which he is located is about 60,000. There are no other Brown franchise stores in that town. There are no other shoe stores carrying Brown lines. There is a department store in the town on the Wohl plan.

The name of the Brown field man who visits his store is Ed Smithers. He comes about twice a year. On his visit he makes up a buyer's guide, which is a guide to go by to use as pairage, which is by departments, size runs. It is helpful in buying stock, restocking a store. It says where they have sold and the amount of pairs they have

[fol. 413] sold, based on the previous year's figures. The field man helps him fill it out. The field man doesn't fill it out, but helps the witness to do so. On these visits he stays about a day, sometimes a day and a half.

Redirect examination.

By Mr. Burke:

Q. In regard to this franchise agreement, do you have occasion to refer to that?

A. I haven't looked at that, it's been in my safe, I guess—I haven't looked at it in ten years.

Q. Has anyone from Brown ever called it to your attention?

A. No.

Mr. Burke: No further questions.

Examination.

By Hearing Examiner Creel:

Q. Do you use the phrase, "confined to lines to my store"—I am not sure what you said about that phrase, and also I am not sure what it means. Was that a phrase somebody used in talking to you? Was that your understanding of what you had to do or what was it?

A. My understanding was that they would—in other words, actually those shoes were not in Killeen, that I would have those exclusively.

Q. In other words, when you became a Brown franchise store they wouldn't sell those shoes to anybody else in your town, is that it?

A. Yes, that is it. I understand it doesn't always work in some places, but it has there so far.

Aubrey A. Foster, called as a witness for the Respondent, testified as follows:

Direct examination.

He lives in Gilmer, Texas, which has a population of approximately 4500. He estimates his trade area would include a radius of about 50 miles. There would be 75,000 to 100,000 people in the area. The witness is in the shoe [fol. 414] business. He has a shoe store, Foster Shoe Store, in Gilmer. He opened the store on August 19, 1937. The credit man for Brown Shoe Company agreed to give him about 60 days with 5 percent, if he would agree to pay half the opening order. He got the store opened, 15 or 20 days late, he met that particular time, and that is as much financing as he got. His store became a Brown franchise store in 1940 or 1941, probably 1941. The witness doesn't have a written franchise agreement and doesn't know anything about one.

As to brands, he carries Brown Shoe Company, H. C. Godman Company, Florsheim Shoe Company, Daniel Green (house slippers) and Craddock-Terry Shoe Company of Lynchburg, Virginia, Home and Abroad (from Boston) and Buskins. He carries, in the Brown line, Roblee, Pedwin, Air Step, Smart Aire, Robin Hood, Life Stride. In canvas and rubber footwear, for a while he carried Kedettes in the playshoes, but he cut Kedettes, they didn't make them narrow enough for his trade. He went in the Red Ball line called Summerettes. He carries Summerettes and Keds in the boys' tennis shoes, and some from B. F. Goodrich. He orders U. S. Rubber footwear directly. There is no difference in price between those three suppliers. He obtains about the same credit terms from all of them. He does carry Buster Browns. He believes that Red Ball is a division of U. S. Rubber.

The witness buys group life insurance through the Brown program, but not group business insurance. His bookkeeper is an insurance man, and he carries all of the insurance on a report and looks after it, so that all the witness has to do is send in a check. He has compared the cost of his business insurance as he carries it locally to what it would cost if he obtained it through Brown, and he doesn't think there is much difference.

As to whether anyone from Brown Shoe Company ever told him he could not carry an outside line or conflicting line of shoes, the witness said, nobody tells me that. No one from Brown has ever told him that he must get rid of an outside line of shoes. No one from Brown [fol. 415] has ever told him that he must carry a certain line or brand of shoes.

The term "line concentration" means, to the witness, the less amount of lines you can handle in their business gives fewer duplications. A traveling man comes in with a line of shoes, you may forget what patterns you have, and you will duplicate it too often if you buy too many lines. They find that it does not pay to buy too many lines if you can concentrate. Increasing the number of brands he carries, by buying, conflicting brands, will not increase his volume.

The witness purchased some Clinics one time from the Juvenile Shoe Company but he didn't like the way they fit and he just didn't buy any more. It has been 8 or 10 years since he made the purchases. He was on the franchise program when he purchased them, but they didn't know about him buying them and he didn't ask them. He does not think they would have said anything about it. The ssalesman possibly attempted to sell him Lazy Bones children's shoes, but he doesn't remember, it's been so long. Juvenile does not have distribution on Lazy Bones or Clinics in Gilmer.

[fol. 416] He has never purchased any shees from the Deb Shoe Company. They were carried in Gilmer last year, he doesn't know if they still have them.

The witness never purchased any shoes from the Freeman Shoe Company, because he never had any occasion to. They never called on him. The last fellow that called on him with Freeman was an old buddy that he used to work for in Wichita Falls. He came to see the witness as a friend. Freeman had an account there. Naturally the witness didn't get them. That account was Kurtz store, a men's wear store. The fact that another brand line is already being carried in Gilmer determines whether to carry the line. In a town that size you don't carry your neighbor's brand.

When he was buying for other people, he purchased from Weyenberg Shoe Company, but never for himself. When he went to Gilmer from Houston in 1935, he bought some Weyenbergs for the Marshall Company there. That was not a franchise, just a department store, with a shoe department. Weyenbergs are carried in town row, but he doesn't know who carries them. He has not purchased Huth-James Shoes since he has been in buisness, but he knows of them and he bought shoes from them one time, when they were called Modern Miss, a long way back, for another firm. That would have been 1935 or 1936. He has never purchased shoes from the Leverenz Shoe Company, and he is not familiar with the line.

Cross-examination.

The witness carried a few Home and Abroad shoes. He doesn't have any this year. They are a make-up, high style line, that run from about \$12.95 to maybe \$19.95. He sold about 250 to 300 pair a year when he handled them. Craddock-Terry has Fashion Miracle Tread and Natural Bridge, young ladies shoes, from \$9.95 to \$10.95. They make lots of young ladies' shoes for all age groups. He carries quite a few of their shoes in walking shoes. They are very good on slip-lasted shoes, wedges. That would be \$9.95 to \$10.95. He likes them very much. He carries a Bus-[fol. 417] kins shoes in a playshoe and sandal and a few of their Honey Bug house shoes. That is in a price range of \$3.98 to \$5.00, a low line.

Examination by the Hearing Examiner.

The witness carries some conflicting lines of shoes. For example, Craddock-Terry would conflict with his Air Step line a little bit, but he picks the ones he thinks are the best buy. He said, for example, Air Step comes out with a line of slip-lasted shoes, I am not in the shoes business for Brown Shoe Company or Craddock-Terry, or anybody else—I am in for myself—and they come out with a line and I had to turn Air Step down on their slip-lasted shoe because I had to sell them at \$10.95 and I could sell Craddock-Terry for \$9.95.

The witness liked their last, the way they fit. He knows how to fit shoes, and he goes by the way the shoe fits. He carries just as few brands as he can in order to make money on them.

E. A. Monday, called as a witness for the Respondent, testified as follows:

Direct examination.

The witness resides at Batesville, Arkansas, and is in the shoe business. He has been in the shoe business since about 1921. Up until 1931, he was with his father in the retailing of shoes. They had a clothing store. Then in 1931 they purchased a bankrupt stock of shoes. That is when he went into the shoes business for himself in Batesville. He still has a store in Batesville, the name of which is Monday's Shoe Store. It is on the Brown franchise program. He guesses they went on the Brown franchise in about 1935, but he can't remember exactly.

Q. When you went on the Brown franchise program, did you sign any written agreement?

A. I signed some kind of paper.

Q. Did you have occasion to refer to that paper?

A. No, uh-uh, I haven't seen it since I signed it, don't reckon.

[fol. 418] The witness also has a half interest in a couple of other stores besides the one in Batesville. They are located at Conway and Newport, Arkansas. He does not participate in the management of those stores. The lines of shoes carried in the Batesville store are: Roblee, Buster Brown, Life Stride, Robin Hood, a few Johansen, Florsheims, Godman, Buskins, Pedwin, a few of the Scout shoes, plus Air Steps and Clinics.

As to whether Brown has ever told him that he could not carry an outside line of shoes, the witness said, not in my life. He has never been asked by Brown to stop carrying an outside line of shoes. As to what determines the shoes he carries, he stated that he had sold Brown shoes early, all along, and just liked them way back there. He likes the line and has stayed with them.

He carries some canvas and rubber footwear, mostly U. S. Rubber Company. He buys a few rubber goods from LaCross. He orders U. S. Rubber direct from U. S. Rubber Company, but it is invoiced through Brown. The price he receives on that method of buying is the same price he would receive if he ordered directly and if it were invoiced through U. S. Rubber.

Line concentration to the witness means help about his books for purposes of inventory as the main thing. It has nothing to do with the brands he carried.

[fol. 419] The Clinic line shoes which he carries are manufactured by Juvenile Shoe Corporation. He has carried those for about 6 or 7 years. Not a word has ever been said to him by anybody from Brown asking him to discontinue the carrying of Clinics.

The witness has never handled any shoes manufactured by Deb Shoe Company. As to whether a salesman from Deb had ever called on him, he said that at one time evidently a little store had closed, they quit the shoe business, the Deb people came up and wanted to sell the shoes to him, but he couldn't take them because they were too conflicting. Brown did not tell him that he could not take them. The reason that he didn't buy them was that, like Life Stride and Buster Brown, they're just about all the same patterns, and he advertises on those lines and hates to pull in new lines and try to advertise on that too. It might kill the other one. In other words, it was his business decision.

He has never carried any Freeman shoes. A Freeman salesman has never called on him. He carries a few Weyenberg work shoes. He has never carried any of their dress shoes. He is not familiar with the Massagic or Port-Ped line and the salesman has never tried to sell him that line of shoes. The witness has never heard of Huth-James shoes and has never carried any shoes manufactured by the Leverenz Shoe Company. He has never had a salesman call on him from the Leverenz Shoe Company.

Cross-examination.

The witness has a half-interest in the Monday-Powell Shoe Store in Conway, Arkansas, and that is a Brown franchise store, too. He doesn't think that he has signed a Brown franchise contract there.

In the Batesville, Arkansas store he carries a few Johansens. That is a casual, low heel specialty shoe retailing for about \$10.95. It is a woman's shoe. He also mail [fol. 420] orders a few of the higher grade novelty styles. He did not sell too many of those last year because the style ran out. His wife wears them all the time and she mail orders them.

The witness also has Buskins and carries a pretty good bunch of them. He thinks he sold more than 500 pair last year. They had a little cloth shoe which he bought a lot of instead of U.S. He could not tell how many Buskins he had sold last year other than the canvas shoes.

He does not carry the full line of Clinics, but about three patterns. They are slow movers. He sold about 100, maybe 200 pair more than last year.

Besides himself and his wife, he has 4 other employees in the Batesville store. His approximate turn over in pairs of shoes in that store last year was around 9,000 or 10,000.

- Q. What is the Brown fieldman's name who visits your store, the Batesville store?
 - A. Barnett, now, Sam Barnett.
- Q. How often does Mr. Sam Barnett visit your Batesville store?
- A. Well, I haven't had him, fieldman, I guess he's been there—might have him one time, come through one time to see us all.
 - Q. A year?
 - A. About once a year.
 - Q. Does he talk to you when he comes?
 - A. That is what he comes for, I reckon.
 - Q. What does he talk to you about when he gets there!

 A. Well, first one thing, whether you need to clean up,
- Q. (Interrupting) Does he-
 - A. (Continuing) —the stock.
 - Q. Sirt

A. Some of your stock, old stock, something like that, keep your stock clean.

Q. He tells you that you have-

A. (Interrupting) No, he advises you to.
Q. Advises you to get rid of some stock?

A. Old stock, yes.

Q. He advises you to get rid of some brands of shoes?

A. No, his own—told us so we can buy some more new ones, see?

[fol. 421] Allan B. Stephenson, Jr., called as a witness for the Respondent, testified as follows:

Direct examination.

He resides at Greenville, Texas and is in the retail shoe business. He has personally been in that business for about 21½ years. His father has had this same store for approximately 45 years. The store is called Stephenson's Shoes, Incorporated and is located at 2719 Lee Street, Greenville, Texas. The population of Greenville is a little over 19,000. The witness participates in the management of the store and has since October of 1948. His father operated the retail shoe store in Greenville from February, 1916 with a man, he came over from Waxahachie and opened a shoe store there at that time. The witness does not know the date of the Brown franchise, but he and his father were reminiscing the other day and he thinks it's been a little over 35 years.

The lines of shoes which they presently carry in Greenville are: in men's shoes, Florshiem, Roblee, Pedwin, Red Wing workshoes and Acme Boots; for ladies, Naturalizers, [fol. 422] and Life Stride; Robin Hood and Buster Brown children shoes; and Daniel Green house shoes, some cushionized Bellaire arch type shoes, Viner Brothers loafer line, some shoes from the Graham-Brown Shoe Company and Autry Rubber Company, U. S. Rubber Company footwear, which would include Keds and Kedettes, and quite a few Ripon slippers and Lujano women's casuals, an

Italian make. They also carry Hush Puppies by Wolverine, that is one of the mainstays. They carry a few of their work shoes too. They carry Blum house shoes, another line of house shoes.

The witness did not know if there was a written franchise agreement in connection with their shoe company. There may have been one a long time ago but neither he nor his father has seen it in years and years. Brown Shoe Company has never told them that they could not carry an outside or conflicting line of shoes. And Brown has never asked them to stop carrying an outside or conflicting line of shoes. Brown has never told them that they must carry any certain Brown line or lines of shoes. They have always carried Brown's major line of shoes but that was because they thought it was the best shoe value in America. That was his father's decision, since he has been carrying all those lines or their predecessors for 40 or 45 years. Now, the witness makes 99 percent of the decisions. He does not consider his father semi-retired because his father still does some of the book work. There is another man associated with them who does most of the buying. The witness usually helps.

As to what the term "line concentration" means to the witness in terms of shoe retailing, he said, we all know the way the trend is in the shoe business today, if you spread yourself too thin you can't show variety in one line. If you pick a pattern or two in this line and pick a pattern or two in that line, the first thing you know you know you have a whole houseful of shoes and nothing you can sell. So we find by concentrating our efforts on our main lines, we can do a much better job of merchandising because it is becoming quite a job to figure out what to buy on the number of lines we carry. If you spread it [fol. 423] out even thinner, it would be a much more difficult job. We are all in it to make money, that is how we feel we can make money, by concentrating our efforts.

They try not to carry duplicating patterns in different lines unless they feel they can get a wide price spread. A good example is their Florsheim and Roblee lines. If they get a Roblee shoe, which is a Brown Shoe Company shoe, and Florsheim, International, if that Roblee is too close to the same pattern as the Florsheim shoe, it will

hurt the Florsheim and that is true of your Pedwin and Roblee. In other words, if they conflict. Whereas if you have a different price category, several different price categories in the two lines, it makes it easier to sell a man. If you show him three shoes with a dollar difference, you have to go into the rigmarole why there is that little bit of difference.

[fol. 424] To his knowledge, their store has never purchased any lines from the Juvenile Shoe Company. Not since he has been there. The Fashion Shoe Store across the street carries Clinics.

They have never purchased any shoes from the Deb Shoe Company because they just never felt any need for it. They can buy all they feel a need for, that they can merchandise properly, from other sources. At one time they talked to them—they had another account in the town at that time and they were at their height.

The witness has never purchased any shoes from the Freeman Shoe Company. A salesman called on them a number of times and he did not have an account in town and was trying to sell them. But their line of shoes is right between Roblee and Florsheim and it would just be adding another several thousand dollars investment which the witness didn't feel was necessary at all to do the shoe job he wanted to do. They had no place for them. Brown Shoe Company in no way affected their decision in that matter. They told the Freeman Shoe man no of their own accord.

They have never purchased shoes from the Weyenberg Shoe Company. He did not know whether or not they had been called on by Weyenberg salesmen. As close to Dallas as they are, there is not a week that goes by without 3 or 4 salesmen coming in, but they have never felt any necessity to look at the Weyenberg line. The witness is not at all familiar with the Huth-James Shoe Company. Nor is he familiar with the Leverenz Shoe Company. He has never seen Calumet or Lake Line shoes, manufactured by Leverenz.

Cross-examination.

His father started in the shoe business approximately 45 years ago, and they have had a Brown franchise store for approximately 35 years. Florsheim is their highest priced men's shoe. In effect it is a different price line. [fol. 425] It is the price line above Roblee, and any other Brown's men's shoes.

The Lujano casuals are a line of ladies' Italian footwear. They make a year-round line of shoes and they're all actually made in Italy and imported from Italy. They are a very opened up type of ladies footwear that is more or less a rage at the present time, and have been for several years. Lujano does make shoes for the fall and winter, but they don't buy any of them. Real opened up type casuals, flats and wedge heels. The price is about \$5.99 in their flat-heeled casuals to \$10.99. Their store

doesn't handle any comparable American shoe.

The Blum house shoe is a popular low-price line of men's, women's and children's house shoes. It is an old house, been making house shoes since 1886, something like that. By house shoes the witness means bedroom shoes, better women's slippers, children's felt slippers, house shoes, men's opera type, just something you'd step into—bedtime, bedroom shoes. The price range of those is from \$1.99 to a maximum of around \$5.99. They carry a full line of men's, women's and children's. Blum is a very comprehensive line of popular priced footwear, somewhere around 120 to 150 patterns.

Ripon is a Knitting Company, actually nightwear. Possibly Mucklucks is a more familiar term. It is a type of bedroom slipper that is all wool with possibly a little padded sole, principally for wintertime wear, and more like a sock with a sole on it to be used for men, women and children. The price range for them is \$1.99 to \$3.99.

in that area.

The witness had mentioned the name Red Wing. It is another old shoe manufacturing house in Red Wing, Minnesota, that makes primarily men's work shoes, boots, hunting boots and boys' hunting boots and shoes and work shoes. They will run from \$10 to \$15 in their work shoes and on up to \$20 to \$25 in some of their real top grade hunting boots.

The witness said they attempt to stay away from carrying any conflicting lines, and to a great extent they ac[fol. 426] complish that objective. In times gone by they
have carried various lines, using one as an example, Selby
Arch Preserver shoes. His father used to carry them but
it was a price line of shoes they couldn't merchandise
properly and get the money on, make a turnover, and
after all that's what they are in the business for, so they
just quit carrying them. The lines they carry in addition
to Brown complement or fill in those areas where Brown
does not provide the shoes.

A Brown fieldman visits their store a couple of times a year. When he visits they usually have a general discussion of business. The fieldman apparently has studied the reports that they send to him on a monthly basis and he will occasionally advise them that they are carrying too many shoes in a particular category to be getting the proper turnover in them and actually bring to their attention the things that they need to correct in order to make money. The witness would not say that the fieldman is a merchandising expert, but he is an aid in some ways. He said, actually I think that any of us that have been in the shoe business any length of time are aware of possibly what he brings out, but by having someone outside your firm bring it to your attention, you possibly will attempt to correct some mistakes you made where you might let it ride along 2 or 3 years without correcting it.

The witness is familiar with the term, "calling sizes." When they start to reorder on shoes, usually two of them will work together, and one will call the sizes, the other will write it down. You usually have a size schedule there that shows all the sizes and widths of whichever type of shoe it is, whether it is men's, women's, or children's, and you know from your record that a certain shoe is selling, you want to reorder, but you don't want to duplicate the sizes you have possibly in the wall. One of you will go to the wall, and the other will have the size pad. He will call the sizes you have on hand with the style number and color and the name of the shoe. You go a lot by the name of the shoe. He will in turn look at the shoes in the wall, he will look at the sizes for the shoe. When you go to reorder, where you don't have

[fol. 427] any sizes or want to buy one pair, you can tell from looking at this sheet of paper what you have on hand and you know from experience what you need. This is a pretty common practice. Nearly an every day practice

in shoe stores, or it should be.

Their technique in attempting to properly merchandise their store gets the same result. In other words, he uses a cardex system on his women's shoes, for example. That tells him each day what shoe is sold, not the size particularly, but the stock number. If he sees a shoe during this week period, they have sold 15 or 20 pairs of it, he knows he had better get some more, so at the end of the week they will call sizes on that particular shoe and reorder, if that is a reorder shoe they know they can get. The card index is one of the aids they receive from the Brown franchise program. They purchase it but it is one that was available. They bought it from the manufacturer, the Cardex Company. But it was available through the franchise office so that they could use it to properly merchandise the shoes. In other words, it is a merchandising aid. They use the same system for their Florsheim men's shoe, that same book and everything else. It is not restricted to Brown shoes or anything else-whatever we feel the need. It is a convenient record or method of bookkeeping in merchandising.

Taking one line as an example, Brown Shoe salesmen visit his store about 4 times a year. For each salesman, each line will call on you approximately 4 times a year. He carries two women's, two children's and two men's lines of Brown. So approximately 24 times a year he will have Brown shoe salesmen coming to the store. He wouldn't say that you see one about every two weeks. He saw 4 last

week and he won't see them again for 3 months.

[fol. 428] One time they used the architectural services offered by Brown. That was about 10 or 10½ years ago, when they moved into the present location. Mr. Moore, of the planning division of Brown Shoe Company in St. Louis, made a general layout and schedule of the front. They didn't use it in its entirety, but as a guide, for remodeling the business they moved into. The cost of remodeling

was \$7,500 to \$10,000. The remodeling was primarily based upon the architectural suggestions of Mr. Moore, along with some of his own. If these suggestions had not been available, the witness is a graduate engineer, and he thinks he would have done about 99 percent of it himself. He possibly would have visited other stores and gotten ideas because actually that is all they got from Mr. Moore. Mr. Moore has studied it, he knows how to develop and lay out a store, which would be to their advantage. When the witness did their house, he drew the plans himself. He had a local architect lay out the foundation. In a little town architects usually do not charge a certain percentage of the cost. Usually you agree on some figure. Everything is a little more personal. If he hadn't used Mr. Moore, he'd been in the store about 3 years at that time, they visited other stores to get an idea about what they wanted, although they did use some of his, there were ideas they could have picked up from their International competitor across the street, just good display items and the arrangements of the store, but likely the witness would have done all of it himself.

They have never had an occasion to request credit from Brown Shoe other than just your normal credit that you get when they ship an invoice, 30 days, no extra time or additional credit or a loan or anything of that sort. Brown has never provided them with any neon lighting or sign, or advertisement for their store, that they have not bought. They did not have any large outside sign. Florsheim gave them one big 6 or 8 foot sign which [fol. 429] they have hung outside the store, but the only sign they ever got from Brown are small units to go inside the store, things they have bought such as the Buster Brown clock on the back of the wall, something

like that.

Redirect examination.

Lujano casuals conflict with some Brown branded line of shoes in the sense that the same patterns for the same cost could be obtained from Brown Shoe Company. Life Stride came out this spring with a line of casuals that are a similar type and construction and all, but they told the Life Stride salesman that they just liked the other shoes better and that was what they bought. When they buy the Lujano casuals they bought a couple of the same type shoes in the same price category from Brown. Where they have about 24 styles from Lujano, they bought 3 patterns from Life Stride. They were a little bit different and they felt that they could properly merchandise them in addition to Lujano. Essentially in that area they have their need satisfied by Lujano, although Brown could sell them the shoes.

Brown hs a branded line that carries the same patterns for the same cost as Hush Puppies. The Pedwin Division and even Roblee make shoes similar that would sell to the same man for the same purpose, but again they feel like the Hush Puppies do a little better job for them and consequently they buy them in lieu of one of the other lines. Brown has never told him that they couldn't do this or tried to threaten him or coerce him to keep them from doing that in any way.

Recross-examination.

There might possibly be a certain particular appeal about the fact that the Lujano shoes are made in Italy. The words "Made in Italy" sometimes has a meaning to a woman. The witness buys them primarily because of the construction and the patterns and so forth. It is just a hot line of shoes. It has a lot of eye appeal, price

right, fit, wear and sell.

[fol. 430] Hush Puppies are made of pigskin. It is a man's casual. They make all types. They make them in boots, sometimes slip-on styles, oxford styles. They all have a thick balloon crepe sole, cushioned crepe sole. They're slip-lasted type shoes, very lightweight, water repellant, scuff-resistant. They fit, wear, and feel like you're barefooted. He thinks the name is quite appropriate and he carries a full line of them. Last week they were carrying around 270 pairs some odd pair representing oh, 10 styles. Brown could supply them with a comparable style. They have a series in there. The Pedwin line is comparable to sell to the same man for the same purpose. Brown has a few pigskin shoes and then they have one out of nylon material that was very comparable. It wasn't the same material.

May 16, 1961

SAMUEL MONROE LEWIS, called as a witness for the Respondent, testified as follows:

Direct examination.

He lives in Muskogee, Oklahoma. The population of Muskogee is approximately 38,000. His business is retailing shoes. The names of his shoe stores are B. & B. Shoe Store and L. & H. Shoe Store. B. & B. Shoe Store is on West Broadway, L. & H. is 417-(here the witness was interrupted). In 1948 he acquired a third interest in the B. & B. Shoe Store. In 1955 he acquired full interest so that he owns it completely at this time. They opened the L & H. Shoe Store five years ago in August, and a year ago last March he acquired the full interest of the L & H. Both of these stores are connected with the Brown franchise program. The B. & B. became associated with the program, in August, 1933, and the L. & H., in August of 1956. The witness did not work in the B. & B. Shoe Store prior to the time he acquired an interest in it. So it was a franchise store when he acquired the interest.

[fol. 431] The witness has been retailing shoes since 1926. He is general manager of both stores. The brands of shoes he carries in the B. & B. Shoe Store are: Buster Browns and Child Life for children, Nunn-Bush, Roblees, and Pedwins for men, Air Step, Life Stride, H. C. Godman, and Miller Barefoot Freedom for women, Daniel Green house shoes, and U. S. Rubber for canvas footwear. He also carries Viner Brothers shoes, and H. C. Godman nurses' oxfords and Form Tread nurses' oxfords, made

by Welco Shoe Corporation.

The L. & H. Store carries: Robin Hood and a few Graham-Browns for children. Crosby Square and Pedwins for men, and Life Stride and Smartaire for women. They have H. C. Godman, old lady comfort shoes and nurses' oxfords, and some Graham-Brown flats, some Viner Brothers and Saifers in B. & B. Shoe Store. The kind of Tober Saifers he carries mostly are women's flats and growing girls. The brand name of the H. C. Godman nurses' oxfords is Clara Barton.

The witness doesn't have a written franchise agreement

for the B. & B., but he does have one for L. & H. As to whether he knows the contents of that written agreement, he said, I have read it, I know part of it. I haven't read it since I signed it in 1956. He has never had any occasion to refer to it. Neither Brown nor anyone from Brown ever referred him to that written agreement since the time he executed it. No one from Brown ever told him that he could not carry an outside or conflicting line of shoes. No one from Brown ever asked him to drop, or stop carrying, an outside or conflicting line of shoes. No one from Brown ever told him that he must carry any certain Brown or Brown lines.

The witness stated that he carries U. S. Rubber canvas footwear. In the L. & H. he also has some Batas, out of Belcamp, Maryland. He has no reason to believe that he gets a better price on canvas and rubber footwear from U. S. Rubber by virtue of being a franchise dealer. He can get the same terms from other rubber companies.

He has investigated this.

[fol. 432] The term "line concentration" means something to him. He thinks concentrated lines are naturally better for the merchant. They'd be better off if they stay to more concentrated lines. You don't overbuy and overlap in your buying, the result of which is generally overstock and large markdowns. The effect of this on profit is a loss of money.

As to Clinic and Lazy Bones lines of shoes made by Juvenile, the witness just knows what they are. A salesman from Juvenile has never called on him. The Clinic line is in town.

He purchased shoes from Deb Shoe Company several years back, about 1956. His experience with those shoes [fol. 433] wasn't very good. The shoes didn't fit and he requested to return them and they wouldn't accept them back, said it was one of the top fitters, and that is the last time he has bought shoes from Deb. He sold those particular shoes on sale for a dollar, which cost, he believes, \$4.75 or \$5.25.

He has never purchased any shoes from the Freeman Shoe Corporation. That line is carried in town at S. & Q. Clothiers. That is a retail men's clothing store.

As to whether he has ever purchased any shoes from Weyenberg Shoe Company, the witness had purchased possibly two single pairs for himself. He does not carry the Weyenberg line of shoes because he decided to put in Nunn-Bush instead.

He has never purchased any shoes from Huth-James. He has never heard of the company. He never purchased any shoes from Leverenz Shoe Company. He has never

heard of them.

There are probably 38 shoe outlets in Muskogee.

Cross-examination.

Muskogee is a town of approximately 38,000. As to how many of the 38 shoe outlets are family shoe stores, the witness said, they have the B. & B., L. & H., Marshall's and Sears and Roebuck, which has family shoes, J. C. Penney carries family shoes, Kahn's Boston Store, the Hub, and the Famous, and there is an outlet at a Shoe Center and Felts. Now, those are all family operations, carry men's, women's and children's. Of those, the ones which are not department stores, but are family shoe stores such as the witness', are: B. & B., Marshall's Lee's, L. & H., the Shoe Center, and then there is another low price self-service store, and Felts. They must be close to 75,000 persons in the immediate trade area.

The Child Life shoe in the B. & B. store is an arch support type shoe. Nunn-Bush in the B. & B. store retail for \$18.99 to \$26.99. That is a man's shoe. The Miller Barefoot Freedom is a woman's shoe. The kind of a customer that usually buys that shoe are generally people that [fol. 434] have to, the bone surgeons and chiropodists and people with bad feet. It sells from \$12.99 to \$17.99. The Viner Brothers shoes he carried are mostly sports flats and dress flats. They retail from \$6.99 to \$7.99. He sold about 700 pairs of those last year with both stores.

His total pairage last year was between 7,000 and 8,000 pairs at L. & H., and the B. & B. was probably about 9,000 to 10,000 pairs. He does not carry the complete line of Viner Brothers shoes. He carries about five patterns. They probably have 100 different patterns. He carries just a few Graham-Browns in his L. & H. store. Most of

them are low-priced children's shoes, low-priced growing girls' flats.

The women's category of shoes is the most important in his L. & H. store. Approximately 48 percent of his sales are to women in that store. Children's sales run around 9 percent. He carries Tober Saifer flats. They run from \$6.99 to \$9.99. He does not carry their complete line, but just what he picks out to fit in with his operation.

These salesmen from Brown Shoe Company call on him each year: Smartaires, Life Stride, Air Step, Roblee, Buster Brown, Pedwin, and the salesman for Robin Hood shoes. They will average at least one visit every 4 months, sometimes every 2 months. The Brown fieldman calls on him an average of about 4 times a year. The salesman from Brown makes one visit for both stores, where the same Brown lines are in each store.

At one time he carried Deb shoes. He bought approximately 200 pair. This was not just one order, he had bought them twice. He made two different purchases but he would judge he bought somewhere in the neighborhood of 150 to 200 pair, more or less.

The witness is aware of the architectural service provided by Brown through their franchise program, but he hasn't used it. He has used the window service provided through the franchise program for the B. & B. This was probably in 1955 and 1956 and 1957. He has not used other window trim services since he stopped using the [fol. 435] Brown. Now he does it himself. He can use that same trim over that he used then but he could make his own windows and buy his own materials and be just as effective. That is what he does in the L. & H. store. The approximate cost for doing that per year in the L. & H. store runs about \$125.

He gets free signs from Brown for advertising the lines, the talkers, and just what the average manufacturer puts out. He can't say whether they come through the Brown franchise program or whether they come through the company. These are cards for the windows, window trim cards, line identification cards, no neon signs.

They carry group insurance from George Capon, and he understands it is sponsored by the Brown franchise program. He has life insurance, a group policy, which comes out of Prudential. It is sponsored by the Brown franchise program. And the fire insurance, and public liability and robbery insurance. The witness is sure that the insurance he gets through the Brown franchise program is cheaper than if he had to get it through other sources.

Redirect examination.

The window trim signs that the witness testified that he received from Brown are made of paper. He receives similar signs in connection with other brands of shoes than Brown brand shoes. It is a common practice. He paid Brown for the window trim service that he received. It was between \$400 and \$500 per year.

In connection with the Deb shoes that he ordered a couple of times, no one from Brown ever told him that he could not carry Deb shoes or that he must get rid of the Deb shoe line.

Salesmen from other shoe companies call on the witness in the normal course of his business. There are not many days that go by that somebody doesn't call on him. Sometimes he looks over their lines at that time. He feels free to buy their line if he chooses to. He attends shoe shows and he shops and compares the different lines of shoes and the quality and the style. He feels free to buy any line that he chooses if he can pay for them. Up to [fol. 436] this point, he is the one who determines what shoe lines he carries. The guide he uses is just his good judgment.

The witness was asked by the Hearing Examiner at the time he signed this franchise agreement what his understanding was of what Brown expected him to do to carry out his end of the bargain. The witness said, it was—naturally it was to sell their products and not actually to carry lines that really would conflict. I would naturally believe in concentrated lines, and ever since I have been in the shoe business, I have been sold on Brown shoes, for the men, women and children. I feel that concentration is the success of probably any shoe store, family shoe store.

Recross-examination.

The window trim service in his L. & H. store he did by himself. He has never hired any type of any service for L. & H. at all, but what they buy and put in their windows has cost approximately \$125 a year. When he had the same service from Brown, he had to pay between \$400 and \$500. It was a lot more elaborate window trim. As to whether the Brown people did the work, he said, they laid it out, the window trim service did.

Brown has never extended any credit to him, nor any

loans.

WILLIAM S. COLEMAN, called as a witness for the Respondent, testified as follows:

Direct examination.

The witness resides in Sherman, Texas. He is not any relation to Alvie Ray Coleman, of Vernon, Texas. He is in the shoe retail business in Sherman, Tevas, and owns a store there. The name of that store is Coleman's Shoes. He has owned the store about 4 years, since the first of July. That store is operated under his direction and supervision. It is on the Brown franchise program. The store was on the franchise program when he bought it, and he continued it on the program.

[fol. 437] The witness signed a written franchise agreement with Brown Shoe Company. He is pretty sure the date of the insrument was July 1st, 1957. He has not had any occasion to refer to that agreement. Neither Brown nor any representative of Brown have referred that agreement to him. He has previously been under the agreement, and he has been under that agreement with other stores for quite some time. He put a store under their franchise agreement in 1940 in Miami, Oklahoma. He was the owner of that store. He has never in the period from 1940 when he went into business for himself, had one of their agreements referred to by him, or anyone representing Brown to him.

The witness carries the following lines of shoes in his Sherman store. From Brown Shoe Company he has: children's lines, Robin Hood and Buster Brown; women's Naturalizer and Life Stride; and in their men's Roblee and Pedwin. He also carried some Smartaires. Outside of Brown, he has: the Hush Puppy, made by Wolverine Shoe Company, and Jolene and Orchid which is Tober Saifer. In weather footwear he has U. S. Rubber Company and Mishawaka Rubber Company. Their brand name is Summerettes and Jets, U. S. Keds. He has Texas Boot Company cowboy boots. He has a few Connolly shoes for men. Those are the shoes that he is presently carrying in his store.

In previous years the witness has carried other lines in that store, during his ownership from 1957 to date. He had shoes from Pan American Modes. Those are Caressa. And then Home and Abroad Shoe Company for two seasons. They don't have a brand name that he used. It was

just his label put on it.

Brown has never told him that he could not carry an outside line of shoes. They have never attempted to tell him. His judgment determines what line of shoes he carries. He has bought Brown shoes over the years because he has felt that they were good values. His association with the company has always been a very pleasant one in all angles, credit and otherwise. And when he feels that there is some competitive line that would be [fol. 438] advantageous to him from a profit standpoint, or from a public acceptance standpoint, to one of their lines, he has bought this other line.

For canvas and rubber footwear he carries both U. S. Rubber and Mishawaka brands. The prices are identical. He buys U. S. Rubber through the Brown franchise program, invoiced through Brown. He buys those through a

U. S. Rubber salesman.

He knows the Juvenile Shoe Corporation. A salesman of that firm has never called on him to sell him shoes in Sherman. Probably years ago a salesman called on him in Miami, back in the forties. He does not believe that he bought shoes from them, he doesn't recall. Since

he has owned and operated the Sherman store, from 1957 to date, a salesman from Juvenile has not called on him. [fol. 439] Their Clinic shoes are sold in Sherman, Texas, by Price Department Store. It is a general department

store, the shoe department is leased out.

The witness has never carried any shoes in Sherman manufactured by Deb Shoe Company. He has carried them a previous time. He was in partnership in Vinita, Oklahoma, previous to going to Sherman, and they bought some Deb Shoes there one season, about 1955. They only bought them one season, because they weren't successful with them. A Deb shoe salesman has never called on him in his Sherman store. The line is carried in town by Price's

Department Store.

The witness has never carried any shoes manufactured by Freeman Shoe Company at Beloit, Wisconsin, for his Sherman store. A salesman from Freeman has never called on him in Sherman. The shoes are now carried some place else in Sherman, after a lapse of being out of town for about a year. They had a leased department which went out because of the store closing about a year and a half ago. That was the S. & Q. Clothing Store. They now have leased the men's shoe department in this same department store, Price's Department Store, effective since the first of this year. He understands the Freeman Shoe Company

owns the department.

The witness carried Freeman shoes at one time in 1947 and 1948 in a store in Fort Smith, Arkansas. It was a corporation, Patrick Shoe Company, Inc. It was operated as a Brown franchise store at that time. Freeman had a leased department up the street and so the witness quit them. The witness said they quit Freeman voluntarily because of the lack of service that Freeman would give them where the salesman would favor their own department up the street. When they were able to get plenty of merchandise from other sources, they quit. That was their own decision. The Brown Shoe Company had nothing to do with it. They carried several other men's lines. That store did a large men's business. They had Edwin Clapp, Florsheim, Ross Shoe Company, Connolly Shoes and Bob Smart shoes in that same store. It was on the Brown franchise program at the time they carried those [fol. 440] shoes. The witness was Vice President of that corporation in charge of management. He operated the

store, managed the store and did the buying.

The witness has carried shoes manufactured by Weyenberg Shoe Company, who make Massagics and Porto-Peds. In this same store in Fort Smith they carried a few Portage shoes, while that store was on the franchise program. He has never carried any of the Weyenberg brands, in his Sherman store. He hasn't had need for them. The salesman has called on him. That was his own business decision.

The witness thought that the Huth-James Shoe Company is the company that has become H. & A., meaning Home and Abroad Shoe Company. He has heard of the Huth-James Company. A salesman has never called on him since he has been in Sherman. The witness has never bought shoes from the Leverenz Shoe Company of Sheboygan, Wisconsin. He doesn't remember if a salesman has ever called on him from the Leverenz Shoe Company for the purpose of selling him shoes.

The witness has compared the prices and credit terms he gets from U. S. Rubber and Mishawaka on canvas and rubber footwear and any that have ever been offered to

him have been identical.

Cross-examination.

The witness has been in the shoe business for himself since 1940. Prior to that time he was employed in department stores. Most of those years were in the shoe business.

In his Sherman store he carries Connolly shoes for men. Those that he carried were in the price range from \$16.95 to \$19.95. He does not have many of those in his store. He has practically quit buying them because he hasn't found them too satisfactory from the selling standpoint. He doesn't suppose that he has over 24 pairs at the present time. He has carried a stock of up to about 50 or 60 at a peak. That was two years ago.

[fol. 441] Pan-American Modes are women's style shoes. Caressa is the brand name. It is a rather high style shoe. At the time that he bought them, they were \$14.95. They have recently gone to the \$16.95 bracket. One reason he discontinued them, he hadn't sold shoes in that price bracket, so he quit. The Connolly shoe is a men's dress